88-1312

Supreme Court, U.S.
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NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

ESTATE OF ARCHIBALD CORNETT,
DECEASED, ET AL.,
Petitioners,

v.

ESTATE OF M. D. SIKES, DECEASED, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

I.

WHETHER THE APPEALS COURT ABUSED ITS DISCRETION IN AFFIRMING THE TRIAL COURT'S GRANTING OF RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT IN AS MUCH AS A JURY COULD REASONABLY FIND OR INFER THAT THE PETITIONERS AND THEIR ANCESTORS DID NOT OR COULD NOT HAVE KNOWN OF THE PARTICULAR CAUSES OF ACTION ALLEGED IN THEIR SECOND AMENDED COMPLAINT OVER TWO YEARS PRIOR TO THE DATE THIS CIVIL ACTION WAS FILED, OCTOBER, 1984 BASED ON THE SPECIFICALLY ALLEGED SOCIAL AND PSYCHOLOGICAL IMPASSES CREATED BY THEIR RACE SPECIFIC CONDITION OF INEQUALITY.

A. WHETHER A JURY COULD FIND OR INFER THAT PANOLA COUNTY, TEXAS MAINTAINED A *DE JURE,* AND *DE FACTO* SYSTEM OF TWO SOCIETIES, ONE WHITE AND ONE BLACK, RELATIVE TO LAND OWNERSHIP, HOLDINGS AND/OR INHERITANCE WITH THE INTENDED EFFECT OF CREATING A SELF-SEALING, SELF-EXECUTING AND SELF-CONCEALING SYSTEM OF LAND DIVESTMENT AS FAR AS BLACK PETITIONERS WERE CONCERNED AND THAT SUCH A SYSTEM CAUSED THE COMPLAINED OF INJURIES TO BE INHERENTLY UNKNOWABLE BY SAID BLACK PETITIONERS UNTIL SOMETIME IN 1984.

B. WHETHER A JURY COULD REASONABLY FIND OR INFER THAT CRITICAL FACTS NECES-

SARY TO MAINTAIN THIS CIVIL ACTION WERE FRAUDULENTLY CONCEALED UNTIL SOMETIME IN 1984 BY THE FOREGOING SELF-SEALING, SELF-EXECUTING, SELF-CONCEALING SYSTEM OF TWO SOCIETIES AND RELATIVE TO LAND OWNERSHIP, HOLDINGS, AND INHERITANCE.

C. WHETHER A JURY COULD REASONABLY FIND AND INFER FROM THE FACTS, CIRCUMSTANCES AND CONDITIONS ALLEGED IN THE SECOND AMENDED COMPLAINT, THAT PETITIONERS EXERCISED REASONABLE DILIGENCE IN DISCOVERING THEIR RIGHTS OF ACTION ASSERTED IN THIS CIVIL ACTION.

D. WHETHER A JURY COULD REASONABLY FIND OR INFER THAT PETITIONERS WOULD NOT HAVE BEEN ABLE TO DISCOVER ADEQUATE GROUNDS DURING 1961 AND AS LATE AS THE END OF 1975 AND OTHER CRITICAL PERIODS OF THE LAND LOSS AS ALLEGED IN PETITIONERS' SECOND AMENDED COMPLAINT AND AS DETERMINED BY THE DISTRICT COURT.

E. WHETHER A JURY COULD FIND OR INFER THAT PETITIONERS WOULD NOT HAVE HAD AN EQUAL OPPORTUNITY TO SUSTAIN THIS CIVIL ACTION UP TO AND INCLUDING, OCTOBER 1, 1961 DUE TO SPECIFIC *DE JURE* AND *DE FACTO* EDUCATIONAL AND SOCIETAL DEPRIVATION BASED ON THEIR RACE SINCE PETITIONERS COULD ONLY RELY ON WHAT THEIR ATTORNEY TOLD THEM WITH NO INDEPENDENT KNOWLEDGE OR INTELLECTUAL OR PSYCHOLOGICAL CAPACITY TO REALIZE THAT CIVIL

RIGHTS VIOLATIONS HAD OCCURRED AND NOTHING IN THE RECORD SHOWS THAT ANY ATTORNEY EVER RECOGNIZED OR WAS WILLING TO ASSERT OR IDENTIFY FOR PETITIONERS SUCH CIVIL RIGHTS VIOLATIONS UP TO OCTOBER 1, 1984.

II.

WHETHER A JURY COULD REASONABLY FIND OR INFER THAT PETITIONERS DID NOT HAVE THE SAME RIGHTS AS WAS ENJOYED BY WHITE PANOLA COUNTY CITIZENS TO INHERIT, PURCHASE, SALE, HOLD AND CONVEY REAL AND PERSONAL PROPERTY AND THAT THE REASON FOR SUCH DIFFERENCE WAS *DE JURE* AND *DE FACTO* RACE CLASSIFICATIONS IMPOSED BY COUNTY RESPONDENT AND PARTICIPATED IN BY THE FATHERS AND GRANDFATHERS OF INDIVIDUAL RESPONDENTS AND THAT SUCH CONDITION SUFFERED BY BLACK PETITIONERS MADE IT IMPOSSIBLE FOR THEM TO KNOW OR REASONABLY KNOW OF OR HAVE ARTICULATED THEIR COMPLAINED OF INJURIES PRIOR TO 1984 AND MOREOVER TO HAVE RESISTED SUCH INJURIES AND THEIR CORRELATIVE INTELLECTUAL, SOCIOLOGICAL AND PSYCHOLOGICAL IMPACT.

III.

WHETHER A JURY COULD FIND OR INFER THAT PANOLA COUNTY, TEXAS HAD A PATTERN, PRACTICE AND/OR POLICY OF ESTABLISHING *DE JURE* AND *DE FACTO* LAWS, CODES,

CUSTOMS AND TRADITIONS THAT HAD THE SPECIFIC INTENT TO ADVERSELY IMPACT BLACK PETITIONERS' ABILITY TO OWN, HOLD AND INHERIT LAND AND THE DISCRIMINATORY EFFECT OF THE FOREGOING SYSTEM ALLEGED BY PETITIONERS WAS REASONABLY FORESEEABLE TO PANOLA COUNTY, TEXAS AND ITS WHITE SOCIETY WHEN IMPOSED. THIS SORT OF ACTIVITY SHOULD NOT BE IMPOSED AGAINST BLACK (RACIALLY MIXED) PETITIONERS TO DIVEST THEM OF THEIR REAL PROPERTY AS IT REWARDS TOO MUCH, THE RACIAL DISTINCTIONS AND PERSECUTION OF RACIALLY MIXED MARRIAGES/UNIONS IN OWNING, HOLDING OR INHERITING LAND TO THE POINT OF BEING INCONSISTENT WITH FEDERAL POLICY AND THE FIRST, THIRTEENTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION. THE APPEALS COURT ABUSED ITS DISCRETION IN AFFIRMING THE TRIAL COURT'S GRANTING RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT IN AS MUCH AS A JURY REASONABLY COULD FIND AND INFER PANOLA COUNTY'S MAINTENANCE AND ENFORCEMENT OF SUCH PATTERNS, PRACTICES AND POLICIES AND ITS FAILURE TO AFFIRMATIVELY DISESTABLISH ITS RACIALLY DUAL SYSTEM OF OWNING, HOLDING AND INHERITING LAND.

IV.

WHETHER THE APPEALS COURT ABUSED ITS DISCRETION IN AFFIRMING THE TRIAL COURT IN THAT A JURY CAN REASONABLY FIND AND

INFER THAT THE PREJUDICE TO RESPONDENTS, IF ANY, IN BRINGING PETITIONERS' CLAIMS IN 1984, CANNOT BE ATTRIBUTED IN ANY WAY TO PETITIONERS AND THAT RESPONDENTS, BEING FREE, KNEW OR SHOULD HAVE KNOWN OF THE HARMS COMPLAINED OF AND THAT TITLE TO THE SUBJECT LAND WAS QUESTIONABLE AND HENCE RESPONDENTS ARE NOT ENTITLED TO ANY EQUITY BASED ON THEIR PREVIOUS OWNERSHIP.

V.

WHETHER THE APPEALS COURT ABUSED ITS DISCRETION IN AFFIRMING THE JUDGMENT OF THE TRIAL COURT SINCE A JURY REASONABLY COULD FIND OR INFER THAT THE ALLEGED FRAUDULENT DIVESTMENT SCHEMES PRACTICED AGAINST BLACK PETITIONERS BY PRIVATE AND PUBLIC PERSONS AND WHITE HATE GROUPS COUPLED WITH THE INTENTIONAL LACK OF PROTECTION AND THE ENCOURAGEMENT, ENHANCEMENT AND ENFORCEMENT OF SAID SCHEMES BY THE PANOLA COUNTY GOVERNMENT HAD THE OPERATIVE EFFECT OF CONCEALING THE CIVIL ACTIONS ALLEGED IN PETITIONERS' SECOND AMENDED COMPLAINT UNTIL OCTOBER 1, 1984 FROM UNEDUCATED PSYCHOLOGICALLY IMPACTED, ELDERLY PETITIONERS.

VI.

WHETHER THE APPEALS COURT ABUSED ITS DISCRETION IN SUSTAINING THE TRIAL COURT'S

OPINION SINCE THE TRIAL COURT'S FINDING THAT PETITIONERS ADMITTED THAT THE FRAUDULENT CONCEALMENT OF THE PARTICULAR CLAIMS IN APPELLANTS' COMPLAINT ENDED OCTOBER 1, 1961 AND (CLEARLY BY 1975) WAS CLEARLY AN ABUSE OF DISCRETION, AND RESULTED IN AN ERRONEOUS FACT FINDING AND USURPED THE PROVINCE OF A JURY WHICH REASONABLY COULD HAVE FOUND OR INFERRED FROM THE FACTS, CIRCUMSTANCES AND CONDITIONS ALLEGED AND SUPPORTED BY EVIDENCE THAT THE FRAUDULENT CONCEALMENT IN FACT PROCEEDED UP TO AND INCLUDE THE EARLY PART OF 1984.

VII.

WHETHER THE APPEALS COURT ABUSED ITS DISCRETION BY SUSTAINING THE TRIAL COURT WHICH MADE A CLEARLY ERRONEOUS FINDING OF FACT THAT NO SPECIFIC RESPONDENTS WERE NAMED AS WRONGDOERS IN THIS CIVIL ACTION INASMUCH AS THE FIRST AMENDED COMPLAINT ALONG WITH ABSTRACTS, ARCHIVAL AND OTHER DOCUMENTS CLEARLY SHOWED RESPONDENTS AND/OR THEIR FATHERS AND/OR GRANDFATHERS AND/OR PREDECESSORS IN-INTEREST, TITLE OR OFFICE AND CLEARLY AND SPECIFICALLY IDENTIFIED THEM AS TO THEIR ROLE IN THE COMPLAINED OF DIVESTMENT AND AS TO THEIR RELATIONSHIP TO ORIGINAL WRONGDOERS.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Your Petitioners[1] respectfully pray that a Writ of Certiorari issue to review the October 25, 1988 unpublished opinion and judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above cause.

1. Petitioners herein are the ESTATE OF ARCHIBALD CORNETT, DECEASED, ESTATE OF SALLY WILLIAMS CORNETT, DECEASED, JENNY CORNETT-GERMAN, LILLIAN GERMAN-BENJAMIN, CARRIE ARMSTRONG, HUEY GERMAN, JESSE E. GERMAN, ANNIE M. JONES, SHIRLEY J. GERMAN, MICHAEL GERMAN, JOE GERMAN, TOMMIE GERMAN, JENNIE L. JOHNSON, BOBBIE J. BANKS, ROY J. GERMAN,

OPINIONS BELOW

The unpublished opinion and judgment of the United States Court of Appeals for the Fifth Circuit were each filed October 25, 1988. Copies of the Appeals Court's October 25, 1988 opinion and judgment are included in Appendix A, together with a copy each of the Trial Court's Judgment and Order filed February 19, 1988.

GROUNDS OF JURISDICTION

The Judgment and Opinion sought to be reversed was entered by the United States Court of Appeals for the Fifth Circuit on October 25, 1988, affirming the District Court's judgment and order in all respects. This Petition for Writ of Certiorari was filed within ninety days of that date.

This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254(1).

LE OTIS THOMAS, SANDRA FELDER, CLARISSA HUDSON AND KELLY JACKSON, SR., BEULAH M. CURTIS, GWENDOLYN PIPKIN, KIMBERLY PIPKIN, DONNA PIPKIN, EVA JEAN PIPKIN, SALLIE McMILLONS, RAYMOND PIPKIN, JUDY PIPKIN, STEVE PIPKIN, EVA PIPKIN, HILDA PIPKIN, MANDY O'GILVIE WILLIAMS, THOMAS PIPKIN, MELVINA TUCKER, RUTH PIPKIN YADELL, JIM PAYTON, JULIE PAYTON DUNCAN, BETTY PAYTON, BAILEY PAYTON, MARY NELL PAYTON, ALTON CORNETT, WILLIE CORNETT, VERNON CORNETT, BERNICE WASHINGTON, LEE A. CORNETT, ROBERT CORNETT, LEONA PORTLEY, LEOLA CORNETT BARS, JOHN A. CORNETT, BERNICE JONES, ARCHIE CORNETT, SALLIE MAE CORNETT, GATES CORNETT, JEWEL CORNETT, MARVIS McMILLONS, VERNICE THOMAS, BOGUS CORNETT, VELMA CORNETT GRASPLE, RUBY CORNETT HALL, CHARLES DAUGHTERY, OLLIE TUCKER HOLLINS, NEWT TUCKER, BLANCHARD TUCKER, LINDA CORNETT, LEVADA CORNETT, ROBERT LOUIS CORNETT, DAVID EARL CORNETT, AUDREY CORNETT HINES, ADA CORNETT, LAURA MAE ALLEN AND PERRY O'GILVIE.

STATUTES, RULES AND CONSTITUTIONAL PROVISIONS INVOLVED

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These Statutes, Rules and Constitutional provisions are set forth in Appendix H.

STATEMENT OF THE CASE

Petitioners brought this civil action pursuant to the First, Thirteenth and Fourteenth Amendments to the United States Constitution and the Federal Civil Rights Act of 1866, 1870 and 1871 (42 U.S.C. 1981, 1982, 1983, 1985, 1986 and 1988). Moreover, this civil action arose out of the post Civil War acquisition by an ex-confederate calvaryman and his ex-slave "wife" of 160 acres off Yellow Dog Road up by a bend in the Sabine River in the "Flatwoods" of Panola County, Texas. Specifically, Petitioners complained that "but for" the laws and/or customs of Panola County, Texas intentionally refusing or failing to record, recognize, or acknowledge statements, memorials, and/or other muniments of title affecting land ownership and/or inheritances, all being executed as policy statements or decisions officially adopted and promulgated, executed and maintained by Panola County's racially dual deed records; racially dual judicial law enforcement and notice systems; and racially dual tax and vital statistics departments, marriage, births and deaths departments, and probate system, Petitioners land would not have been

unconstitutionally taken by strangers to or fictitious persons in title which the partial abstracts and archival information produced by Petitioners below clearly showed. (Appendix E; See Second Amended Complaint)

Petitioners specifically claimed that the unconstitutional deprivations of due process and equal protection of the laws and customs were visited on Petitioners pursuant to Respondent Panola County's institutional customs that "die hard" and that created and continue to maintain double standards based on race, association and/or previous conditions of servitude even though such customs might not have received formal approval in recent years through the various governmental bodies' official decision-making channels. Petitioners specifically alleged that the institutional practices of Panola County, Texas and those of its employees of: (1) "certifying no record" of Petitioners' and/or their ancestors' existence relative to the land and (2) banishing and allowing banishment of mixed race Petitioners under terrorism and violence and (3) accepting for filing any and all fasities relative to the land and Petitioners' family with knowledge of such fasities allowed and encouraged strangers to steal their land with impunity and the protection of law. Petitioners specifically alleged that such institutional customs relative to land ownership, holdings and inheritance are permanent and well settled against Petitioners' class in Panola County, Texas, as to constitute a 'custom or usage' with the force of law. *See generally, Monell v. New York City Department of Social Services,* 436 U.S. 658, 690-91 (1978).

Petitioners specifically alleged race, interracial association and previous condition of servitude to be at the core of this civil action and as the affirmative links to all unconstitu-

tional acitons and inactions intentionally directed at Petitioners and their class from an institutional sense as far as Panola County is concerned and relative to private citizens' actions as far as individual, non-governmental Respondents and their predecessors in title, interest or office are concerned.

Basic to understanding Petitioners' Second Amended Complaint was the fact that land is unique and an acknowledgment of Petitioners' evidence that the most enduring post-Civil War issues involved questions of black status relative to land ownership, holdings and inheritance. Therefore, Petitioners were attacking a condition which offends the First and Fourteenth Amendments to the United States Constitution which entitled Petitioners to freely associate, expect equal protection of the laws of Texas and, due process under the law relative to life, liberty and property. Petitioners specifically alleged that they were directly and continuously impacted by the most relevant of the badges and incidents of slavery, i.e., slaves could not own, hold or inherit property, especially real property and Petitioners were victims of this same kind, scope and quality of denial based on state action and inaction which abetted, encouraged and sanctioned private individuals to steal Petitioners' land. The Petitioners specifically alleged that the record and information supporting their civil action was not "available" to Petitioners or their ancestors until 1984. The foregoing allegations clearly show a right to proceed to trial by jury. *United States v. Kubrick*, 444 U.S. 111, 122 (1979).

Petitioners alleged and produced unrebutted, substantial historical and contemporary evidence that their inability to know to file their claim before October 1, 1984, was

not inexcusable delay, and especially that any prejudice to Respondents by Petitioners' unconscious delay in bringing judicial action cannot be attributed to Petitioners. Petitioners alleged and had uncontroverted proof that they were psychologically and socially impacted by the racially dual system of land divestment employed by Respondent Panola County, Texas government and the other individual Respondents and/or their predecessors in office, interest or title.

The Petitioners specifically requested equitable relief requesting that Petitioners be recognized under their complaint as the true owners of the Acreage and that the Respondents be required to deliver possession of the Acreage to Petitioners or that some equitable adjustments be made in ownership and possession or that some equitable remedy be fashioned to provide relief. Respondents never offered proof that Petitioners rested on their claim. Respondents never offered proof that they were prejudiced by the delay. Petitioners offered uncontroverted proof that Petitioners did not cause their own circumstances and in no way participated with Respondents.

Petitioners specifically alleged that the history of the condition of Blacks in Texas relative to their inability to hold, own and inherit property based solely on their race and previous condition of servitude was combined with fraudulent and concealed real property transactions under color of state custom and law and "terrorism". Petitioners specifically alleged that this system of divestment and "terrorism" was intentionally established by local government through direct involvement or through that government's knowing acquiescence and through the administering of laws and customs specifically directed

at the recently freed slaves and their descendants and those associated with them. Those laws and customs were legal impediments to addressing "this particular civil action".

Petitioners uncontroverted allegations and proof clearly showed a condition and/or race specific system of intentional, constitutional deprivations of Federal civil rights to own, hold, and/or inherit land in the ex-Confederate, ex-slave State, Texas.

Petitioners uncontroverted allegations and proof clearly and specifically established that intentional, dual, race conscious, legal and customary systems of law enforcement, law courts, recordations connected with land and notice practice, all maintained and executed by Panola County, Texas in an institutional sense, have intentionally deprived and/or aided and abetted private citizens in unconstitutionally depriving Petitioners of their rights to own, hold and inherit land. "But for" those racially based customs, laws and/or systems, Petitioners would have owned, held and been able to pass on or inherit and affirmatively deal with the land sought to be recovered as a remedy herein. Petitioners specifically alleged Panola County, Texas thus as the "moving force" behind the complained of deprivations and the *sine qua non* for private, racially, discriminatory actions taken against Petitioners and the loss of their land.

This civil rights action for damages and injunctive and/or declaratory relief was brought on behalf of Petitioners who, *inter alia,* are heirs "presently denied the right to inherit the Acreage" based on traditional and contemporary intentional discriminatory treatment, legal and customary, in recordation, civil rights enforcement, judicial and extra-judicial divestment, and relative

to basic, minimum civil liberties consistent with equal citizenship and necessary to protect Petitioners' land holdings. The County of Panola, State of Texas is a Respondent herein specifically for affirmatively allowing, encouraging, enhancing and participating in the conditions, laws and customs complained of through County agencies and arms (i.e., Panola County Tax Assessor's Office, Sheriff's Office, Deed Records Office), prosecuting attorneys, their supervisors, and other elected officials of Panola County that, as an interwoven unconstitutional system, intentionally made, perpetrated and encouraged private illegal actions and inspired illegal conduct through dual, racial policies, practices and customs.

Petitioners specifically alleged facts, circumstances and conditions that showed that, in equity, their claims are not otherwise time barred or frivolous. The facts, circumstances and conditions were specifically alleged to be intended by Respondents and/or their predecessors-in-title, interest or office, to be extraordinary and self-sealing, self-executing, and self-concealing for a period of time necessary to bar any law remedy relative to the land.

Petitioners specifically alleged that the series of events leading to this civil action were not misfortunate and unintended but were a pattern and routine practice intentionally directed at Petitioners' race. Petitioners specifically alleged that any wrongdoing by Respondents and/or their predecessors-in-title, office, or interest amounted to more than bare violations and were part of an aggravating circumstance that in equity should be addressed. Petitioners specifically alleged that the natural, probable and foreseeable result of enforcing a racially dual system

of recordation, notice and law enforcement and not protecting Petitioners' race from Klan and white hate activity was to cause land holdings in Panola County and the whole of Texas to shift by fraud and terror from Blacks to Whites and hence to increase or perpetuate the condition of servitude.

Petitioners specifically alleged that the county officials, individually and in their official capacities as the government, created, executed and maintained *de jure* and *de facto* racial classifications that had and continue to have reasonably foreseeable discriminatory effect on Petitioners' ability to own, hold and inherit land and were customs and policies applied, and currently applied, in an intentionally, discriminatory manner. The circumstances and conditions alleged and under which Petitioners and their predecessors lost the land along with Petitioners' race at those times are important inquiries. Petitioners with specificity attacked the overall unconstitutionality of Black land loss under the conditions alleged by pointing to the egregious irregularities openly known to whites but denied to Blacks based on their race and/or previous condition of servitude and the dual society, one black and the other white in Panola County, Texas. In this regard, Petitioners have specifically alleged that the System of Recordation in Panola County was employed to take their family's land. Finally, the Petitioners argued that their banishment by white hate groups hell-bound to allow an interracial couple to own, hold or pass down land to their issue is rewarded by the Appeals Court sustaining the Trial Court's judgment and order and their Draconian interpretation of tolling principles and Statutes of Limitation relative to psychologically damaged black Petitioners and by those Courts' utilizing underlying inferences fairly associated with free persons.

REASONS FOR GRANTING WRIT

A. A Writ of Certiorari should be granted to review the questions presented which concern whether the Fifth Circuit approved "across-the-board" denial of Petitioners' claims based on admissions by parties in *Cross v. Lucious* should stand in light of no evidence of any or controverted admissions in Petitioners case. Petitioners seek a review of the Court of Appeals affirmance of a February 19, 1988 Judgment and Order entered by the District Court which found that Petitioners' claims under the Civil Rights Act, 42 U.S.C. Sec. 1981 et seq., were barred by the Texas two-year statute of limitations, Tex. Rev. Civ. Prac. & Rem. Code Sec. 16.003. Moreover, this Petition seeks to review the Fifth Circuit's affirmance of the District Court's determinations as to when Petitioners' civil rights actions accrued and whether such accurals were tolled until October 1, 1984 or until less than two years prior thereto. The Fifth Circuit Court of Appeals is incorrect on the foregoing issues. Whether a District Court may use an across-the-board approach to deny substantial and unique rights to own, hold and inherit land to mixed race parties who have been unconstitutionally divested of that land based on the association of their grandparents and previous condition of servitude of their grandmother is a substantial and important federal question which has not been but should be settled by this Court.

Further, this Petition seeks a review of the Fifth Circuit's affirmance of the District Court's determination that Petitioners never specified any relation between the named Defendants and any alleged constitutional violations.

Petitioners seek to show this Court that the Appeals Court's affirmance of the District Court was error in that the District Court weighed the evidence and determined the truth of the matters advanced by Petitioners' uncontroverted evidence and the inferences to be accorded said evidence rather than merely determining whether there were genuine issues of material fact for trial by jury

Petitioners seek to show this Court that as a matter of law, the credibility determinations, the weighing of evidence and the drawing of inferences from the facts alleged by Petitioners' Second Amended Complaint and all Petitioners' Responses to Defendants Motions for Summary Judgment and supported by accompanying exhibits are jury functions and that summary judgment was inappropriate.

B. Land is unique. A Writ of Certiorari should be granted to allow review of the unconstitutional deprivations created, executed and maintained by the Panola County, Texas racially dual system of land ownership, holdings and inheritance. No affirmative action has been taken to disestablish that system which was unconstitutional when established and created with the specific intent to deny blacks and those associated with blacks the rights and remedies under the 1st, 13th and 14th Amendments and 42 U.S.C. Secs. 1981 and 1982.

C. Whether the Fifth Circuit Court of Appeals may sustain a district court's total lack of treatment of black Petitioners' claims that the intentional and intense psychological impact of their condition of servitude and lack of citizenship and educational opportunities up to and including 1984 had a strong residual and evolving impasse to their discovery of and ability to know the

essential elements of their causes of action is an important and substantial federal question which has not been, but should be, settled by this Court. Most of the Petitioners are very elderly or too old to have benefited from equal educational and social opportunities in the close, small rural Panola County, Texas. Further, whether the fact that Petitioners hired lawyers is sufficient to hold them responsible for bringing their claims earlier since each such lawyer never recognized or advanced those claims should be addressed by this Court. In this regard, the Fifth Circuit has imposed on black, uneducated, elderly Petitioners a requirement that experts were prepared to testify was psychologically impossible and/or unreasonable.

D. Finally, the decision is contrary to the treatment of the Japanese-Americans and Native Americans who have been successful in having their rights recognized after long lapses of time. This Court recently manifested a willingness to hear a case that had substantially been decided, *see generally, Hohri v. United States,* ____U.S. ____, 107 S. Ct. 2246, 96 L.Ed.2d 51 (1987) and which more closely resembles the instant case. While this Court sidestepped the Statute of Limitation and laches issues based on procedural grounds, Petitioners' approach and theory are validated somewhat by this Court's willingness to resolve the issues created by *Hohri.* More insight is given to the Court's willingness to resolve the issues created by *Hohri* relative to the Statutes of Limitations and laches by Justice Blackmun's statements in his concurring opinion.

> I join the Court's opinion and its judgment. . . . There are three reasons for my concern. The first is the consequent element of further delay in the

> decision on the merits in a case that has roots already more than four decades old. The issue on the merits probably will be back in this Court once again months or years hence. . . .

United States v. Hohri, ____U.S.____, 107 S. Ct. 2246, 96 L.Ed.2d 51 (1987) (concurrence of Justice Blackmun).

THE QUESTION IS SUBSTANTIAL

This Court has not had an opportunity to review whether issues involving black Petitioners claiming unconstitutional divestment of land based on racially dual systems of land ownership, holdings and inheritance created, executed and maintained by a state and/or local government and which systems by design aided and abetted, encouraged and enhanced and enforced private, complex or open fraud and which systems included lawlessness practiced against said black Petitioners/landowners who alleged strong, residual psychological and social damage from their condition of servitude and lack of basic citizenship rights can be decided by summary judgment when Petitioners' pleadings and proof have not been controverted and no evidence exists to show that Petitioners were not diligent and slept on their rights once acquired by current civil rights legislation. This question is important to black citizens who have attempted and continue to try to own, hold and inherit land, especially in small isolated counties of the Old South where the complained of practices, laws and customs flourished.

THE DECISION BELOW IS INCORRECT AND AGAINST FEDERAL CIVIL RIGHTS POLICIES CREATED TO ALLOW BLACKS TO OWN, HOLD AND INHERIT LAND

The decision below is not in compliance with this Court's decisions in *Anderson v. Liberty Lobby, Inc.*, ____U.S.____, 106 S. Ct. 2505, 2511 (1986), *United States v. Kubrick*, 444 U.S. 111, 122 (1979) and *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

A. It is clear enough from the Supreme Court's recent cases that at the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of material matters, but to determine whether there is a genuine issue for trial by the jury. *Anderson v. Liberty Lobby, Inc.*, ____U.S.____, 106 S. Ct. 2505, 2511 (1986). In this regard, the trial court assessed the evidence presented by black Petitioners and accorded weight and inferences thereto which was clearly an abuse of his discretion under *Anderson v. Liberty Lobby, Inc., supra.* The court accorded the moving parties inferences and presumptions not supported by evidence inasmuch as the moving parties presented no or very little summary judgment evidence relative to Petitioners. This is clearly an abuse of discretion under *Anderson v. Liberty Lobby, Inc.*

B. The Appeals Court's decision renders the Reconstruction statutes and the 1st, 13th and 14th Amendments meaningless as to black land ownership, holdings and inheritance and does not promote federal civil rights law. The main goal of Section 1983 was to override the corrupting influence of the Ku Klux Klan and its sympathizers on the government and law enforcement agencies

of the southern states and one strong motive behind its enactment was great Congressional concern that the state courts had been deficient in protecting federal rights. *Allen v. McCurry,* 449 U.S. 90, 101 S. Ct. 411 (1980). *Burnett v. Grahan,* 104 S. Ct. 2924 (1984) (goals of reconstruction era civil rights statutes are compensation of persons whose civil rights have been violated and prevention of abuse of state power). Although adequate in theory, the State remedy for blacks relative to land ownership, was not available in practice in Respondent Panola County, Texas. To this extent, Congress wanted to provide a remedy in Federal Courts supplementary to any remedy any State might have. *See e.g., McNeese v. Board of Ed. for Community Unit School Dist. 187, Cahokia, Ill.,* 373 U.S. 668 (1963) (purposes of Sec. 1983 were to override the results of the insidious laws, state acts, customs, traditions, codes and institutions peculiar to or having a peculiarly disparate impact on Plaintiffs and their class due to their race or previous condition of servitude). In enacting section 1983 (the Civil Rights of 1871), Congress had been especially concerned with murder, whippings, lynchings and "banishings," and that statutory remedy was meant to restore peace and "justice". These sorts of allegations specifically dominate Petitioners' Second Amended Complaint and proof. Section 1983 was intended to grant a broad civil right of redress to any person victimized by an abuse of state power which deprived him of federally secured rights. *Accord, e.g., Golden v. Biscayne Bay Yacht Club,* 530 F.2d 16 (5th Cir. 1976), *cert. denied,* 429 U.S. 872 (1976) (section 1983 "preserves and enforces" as against state action, rights, privileges and immunities secured by the Constitution and laws).

A claim that county officials acting under color of law and the County government, as an institution, refused to perform acts (*e.g.*, recordation of muniments of title and refusing to make proper tax records showing true extent of ownership) even discretionary ones, solely on the basis of Plaintiffs' race states of a cause of action under 42 U.S.C. Sec. 1981. In order to demonstrate a violation of Sec. 1981, it is only necessary that the Petitioners show that they were unlawfully denied, by the Defendants, one of the rights protected by that section. *E.g., Vietnamese Fishermen's Ass'n v. Knights of Klu Klux Klan,* 518 F. Supp. 993 (S.D. Tex. 1981); *Gordon v. City of Cartersville,* 522 F. Supp. 753 (N.D. Ga. 1981) (where racial discrimination motivated by anti-black feeling is displayed against whites, said whites may recover under Sec. 1981); *Vaughn v. Pool Offshore Co., a Div. of Pool Co. of Texas,* 683 F.2d 922 (5th Cir. 1982) (must not only prove disparate and differential impact on persons but also prove governmental act or, in adopting or employing challenged practices or undertaking the challenged action, intended to treat similarly situated persons differently on basis of race). These are the allegations of proof in Petitioners' Second Amended Complaint the proof of which is uncontroverted.

The practices of: (1) not legally acknowledging the full extent of Archibald Cornett's land holdings and failing or refusing to record such (3) the "tracking" of ex-slaves and free blacks on the county records with "FREEDMEN OWNERSHIP RECORDS" or other institutional indications for blacks by the Tax Office and Deed Records offices (5) the County's custom of refusing admittance of Blacks and their family members (whites included) to the area containing the tax and/or

deed records and/or of giving and certifying false information relative to same and for the benefit of Defendants and based solely on Plaintiffs race, previous condition of servitude and associational preference, and (6) custom of banishing blacks and those associated with Blacks from certain areas in Panola County and keeping said exiles out by terrorism, which was enforced, enhanced and participated in by the Panola County government, until the relevant period of limitations on trying title to land expired, should militate against this Court allowing entry of a summary judgment to confirm the unconstitutional taking complained of herein.

C. When a summary judgment motion is made, all reasonable doubts must be resolved in favor of the party opposing the motion and the motion must be denied if there are any unresolved factual issues. Laches is inapplicable to this case inasmuch as Petitioners as moving parties under Rules 12(b) and 56 have not produced any evidence. Further, the fact issues as to whether Petitioners' delay in bringing this civil action is inexcusable and whether any prejudice by such delay was due to Petitioners or Respondents or their ancestors or predecessors-in-interest, title or office should be tried by a jury. *Compare, e.g., Anderson v. Liberty Lobby, Inc.,* 106 S. Ct. at 2510 *with Howard v. Roadway Express, Inc.,* 726 F.2d 1529 (11th Cir. 1984) *and Harvey v. The Great Atlantic and Pacific Tea Company, Inc.,* 388 F.2d 123, 124-25 (5th Cir. 1968).

D. The District Court erred in inferring an admission by black Petitioners that they could have effectively pursued their claims in 1968 after the Martin Luther

King, Jr., era, especially when he was assassinated for inquiring into rights for blacks. In this regard, the Appeals Court's affirmance of the Trial Court's attempt to fashion Petitioners' civil action as close to that in *Cross v. Lucious,* 713 F.2d 153 (5th Cir. 1983), is clearly erroneous as to that fact finding. Indeed, Petitioners' Second Amended Complaint and other responsive pleadings resisting Respondents' Motions under Rules 56 and 12(b) specifically and unequivocally state, and present substantial evidence, that Petitioners could not have effectively inquired or, known of or done anything about their circumstances until 1984. These sort of factual conclusions without any or with very little production by Respondents are an abuse of the Trial Court's discretion under the principles announced in *Anderson v. Liberty Lobby, Inc.,* 106 S. Ct. at 2511. *Accord, Adickes v. S.H. Kress & Co.,* 398 U.S. 144 (1970); *First National Bank of Arizona v. Cities Service Co.,* 391 U.S. 253 (1968).

Unlike Appellants in *Cross v. Lucious,* 713 F.2d 153 (5th Cir. 1983), Petitioners herein have offered unopposed documentary and testimonial evidence in opposition to Respondents' Motions for Summary Judgment and Rule 12(b) that clearly identifies the exact names and status of either Respondents or their ancestors and/or their predecessors-in-title, interest or office. The specific transactions pointed out in the Responses and Supplemental Responses to Respondents' Motions for Summary Judgment and under Rule 12(b) further show the specific conduct forming the historic and contemporary basis of this civil action. On this basis, *inter alia,* Petitioners contend *Cross v. Lucious* is distinguishable.

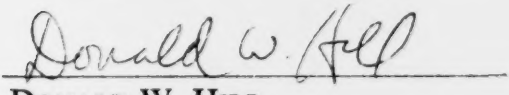
F. Finally, unlike Appellants in *Cross v. Lucious,* Petitioners herein allege that Respondents and their ancestors prevented Petitioners from pursuing their claim and kept them in ignorance of their cause of action and that there were many legal, customary, political policy barriers to bringing their action, which allegations were vigorously disputed by Respondents as material fact questions. To allow Respondents (including their predecessors) to go unpunished forever with no recognition of Petitioners' rights to own, hold or inherit the land herein and based on said Respondents' (or their predecessors') ability to control the circumstances and time under which the Petitioners actually discovered or presented their claims *and* then to disallow review based on an artificial period of time for bringing their claims to correct the situation which, under the circumstances, was the earliest moment possible that the claims manifested themselves in clear, articulable form (1984), maintains and perpetuates a dual system of race-based rules for justice relative to land, ownership, holdings and inheritance in Texas.

CONCLUSION

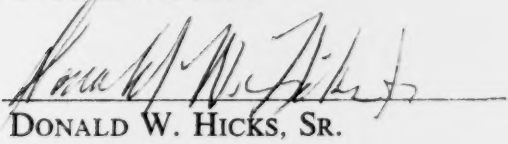
For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

HILL HICKS COLLINS
Attorneys and Counselors at Law



DONALD W. HILL



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Attorneys for Petitioners

APPENDIX

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 88-2316
Summary Calendar

ESTATE OF ARCHIBALD CORNETT, et al.,
Plaintiffs-Appellants,

v.

ESTATE OF M. D. SIKES, et al.,
Defendants,

CLAUDE (HC) FOSHEE, et al.,
Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(TY-84-442-CA)

(October 25, 1988)

Before CLARK, Chief Judge, JOHNSON and JOLLY, Circuit Judges.

E. GRADY JOLLY, Circuit Judge:*

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

The plaintiffs filed this civil rights action in claim to land in Panola County, Texas, alleging that it was unlawfully taken and kept from their family on account of their race in violation of various constitutional rights. They now appeal from a summary judgment denying their claim as barred by the applicable statute of limitations.

I

The plaintiffs are descendants of Archibald Cornett and Sally Williams Cornett. Archibald Cornett was white and Sally Williams Cornett was black and an ex-slave. In the late 1800s, Archibald Cornett settled on 100 acres in Panola County, Texas. The plaintiffs allege that Archibald and Sally Williams Cornett, along with their two oldest children, were forceably driven from this land by certain white citizens of Panola County who disapproved of the Cornetts' interracial marriage. The Cornetts then settled in DeSoto Parish, Louisiana. The plaintiffs allege that a recorded conveyance of the 100 acres from Aster Cornett to M. D. Sikes was fraudulent and, in fact, that no person named Aster Cornett ever existed.

The plaintiffs further allege that they were prevented from knowing the facts of their claim to the 100 acres and from pursuing their claim in any court until 1984. In support of this allegation the plaintiffs cite the history of segregation and racial discrimination in and around Panola County, Texas. More specifically, they allege that Panola County officials denied them access to property and tax records and that no lawyer would take their case.

In 1984, the plaintiffs filed this action in federal court, claiming that they have a right to the land of which they

and their predecessors have been deprived in violation of federal civil rights statutes 42 U.S.C. § 1981 *et seq.* Their second amended complaint named as defendants the Estate of M. D. Sikes, Panola County, Texas, and the current owners of the land. The district court granted the defendants' motions for summary judgment, holding that the action was barred by the applicable statute of limitations, that the cause of action accrued no later than October 2, 1961, and that the statute of limitations was not tolled beyond 1975. The plaintiffs appeal.

II

The major thrust of the plaintiffs' argument is that the oppression of blacks in our society so handicapped them socially, psychologically, and intellectually that until 1984 they were unable to pursue their claim to the land once owned by Archibald Cornett in Panola County. Without doubting the history of segregation and racial discrimination as described in the plaintiffs' brief, pleadings, and affidavits, we are unable to discern how this general fact is legally sufficient to preclude application of the appropriate statute of limitations in this specific case. *Cf. Cross v. Lucius,* 713 F.2d 153 (5th Cir. 1983). As a result, we affirm the judgment of the district court.

It is not disputed that the Texas two-year statute of limitations is applicable to federal civil rights actions. *Longoria v. City of Bay City, Texas,* 779 F.2d 1136, 1137-38 (5th Cir. 1986). The plaintiffs argue, however, that their cause of action did not accrue until recently. As a matter of federal law, their cause of action accrued when they were aware of the injury. *Id.* at 1138. Although the alleged fraudulent transfer of the land in question

occurred in 1902, the plaintiffs allege that on various specific occasions they were prevented from inspecting land records in Panola County and so could not have known of the injury to their interest until recently. We note, however, that the very fact that the plaintiffs and their predecessors were moved to inquire about legal title to the land indicates that they had reason to know that other persons were asserting rights over the land. Furthermore, the district judge relied on the plaintiffs' own admission that they had retained lawyers to recover the land in 1961. Thus, there clearly was no genuine issue of fact regarding the plaintiffs' knowledge of the injury to their interest in the land.

The plaintiffs' claim that the statute of limitations should be tolled is also unavailing. Under Texas law, the statute may be tolled for fraudulent concealment of a material fact. *Bordelon v. Peck,* 661 S.W.2d 907, 908 (Tex. 1983). The plaintiffs do allege that the fraudulent transfer of the property was later unlawfully concealed from them by officials of Panola County. Again, however, there is no genuine issue regarding the plaintiffs' ability to know the material facts of their claim once they had retained a lawyer.

The plaintiffs compare their case to that of Japanese-Americans claiming compensation for their internment during World War II. In *Hohri v. United States,* the District of Columbia Circuit ruled that some of those claims were not barred by the statute of limitations. 782 F.2d 227, 246-53 (D.C. Cir. 1986). In that case, however, the court found that the government had concealed a fact material to the claim, i.e., evidence contra-indicating the military necessity for the internment. *Id.* at 253. Here, on the other hand, the plaintiffs have failed

to specify a fact underlying their claim which they could not reasonably have known until two years prior to the filing of this action in 1984. Thus, *Hohri* is not comparable. (In any event, the Supreme Court vacated the District of Columbia's decision in *Hohri* on jurisdictional grounds and remanded it to the Federal Circuit.)

III

Because the plaintiffs failed to raise a genuine issue of fact regarding the preclusive effect of the applicable statute of limitations to their action, the judgment of the district court is

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TY-84-442-CA

ESTATE OF ARCHIBALD CORNETT, ET AL.

v.

ESTATE OF M. D. SIKES, ET AL.

(Filed March 17, 1988)

NOTICE OF APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

ESTATE OF ARCHIBALD CORNETT, ET AL Plaintiffs in the above-entitled and numbered civil actio hereby give notice of their desire to appeal to the Fift Circuit Court of Appeals, from the Judgment and Orde in this action signed and filed on the 19th day of Feb ruary, 1988 granting the Defendants' Motions for Sum mary Judgment and dismissing this action with prejudic as to all claims and Defendants.

Respectfully submitted,

HILL HICKS COLLINS
Attorneys and Counselors at Law

By: /s/ DONALD W. HICKS, SR.
Donald W. Hicks, Sr.

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CERTIFICATE OF SERVICE (Omitted)

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TY-84-442-CA

ESTATE OF ARCHIBALD CORNETT, ET AL

v.

ESTATE OF M. D. SIKES, ET AL

(Filed February 19, 1988)

JUDGMENT

On this day came on to be heard the motions for summary judgment of Texaco Oil Company, Panola County, Estate of M. D. Sikes, Ann Lewis Rikes and Nevleyn Forshee, wife of Claude (H. C.) Foshee, deceased. The Court, having considered the motions of Defendants, the responses, the affidavits, depositions, and other matters on file with the Court, is of the opinion that judgment should be entered in favor of Defendants, and has this date entered its Order directing judgment for the reasons stated therein. It is, therefore,

ORDERED that Defendants' motions for summary judgment are hereby GRANTED and Plaintiffs shall take nothing on their action against any Defendant. It is further

ORDERED that all costs of Court be taxed against the Plaintiffs.

SIGNED this 19th day of February, 1988.

/s/ WILLIAM M. STEGER
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TY-84-442-CA

ESTATE OF ARCHIBALD CORNETT, ET AL

v.

ESTATE OF M. D. SIKES, ET AL

(Filed February 19, 1988)

ORDER

On this day came on to be heard Defendants' Motions for Summary Judgment. After due consideration the Court is of the opinion that the motions for summary judgment should be granted.

1. *Background*

This suit was filed by the descendants of Archibald and Sally Williams Cornett on behalf of themselves and the Estates of Archibald and Sally Cornett. The Plaintiffs assert their action pursuant to 42 United States Code §§ 1981, 1982, 1983, 1985, 1986, 1988 and the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States.

Specifically, Plaintiffs allege that land once owned by Archibald and Sally Cornett was wrongfully transferred sometime prior to 1915. The Plaintiffs also claim that Panola County and the intervening landowners violated their civil rights in barring their ancestors from recovering ownership of the land because Archibald Cornett,

a white man, married Sally Williams, a black woman. Furthermore, Plaintiffs assert they were precluded from filing suit earlier because of their race.

The Defendants have moved for summary judgment based on the pleadings on file, the responses to requests for admissions and the responses to interrogatories.

2. *Motion for Summary Judgment*

A summary judgment is proper when it appears from the pleadings, depositions, affidavits, and other summary judgment proof that there exists no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Galindo v. Precision American Corp.*, 754 F.2d 1212 (5th Cir. 1985).

The Defendants assert that any claim under 42 U.S.C. § 1981 et seq. which the Plaintiffs may have is barred by the statute of limitations. Therefore, they are entitled to a judgment as a matter of law.

In *Cross v. Lucius,* 713 F.2d 153 (5th Cir. 1983), the Fifth Circuit rejected claims similar to those raised by the Plaintiffs in this action pursuant to the applicable Louisiana statute of limitations. This Court will follow the well reasoned analysis of *Cross* in applying the appropriate statute of limitations to the Plaintiffs' claims.

(a) What period of limitation applies?

The appropriate limitation period for claims arising under 42 U.S.C. § 1981 et seq. is governed by 42 U.S.C. § 1988.[1] Section 1988 dictates that courts follow a three

1. 42 U.S.C. § 1986 is the only civil rights statute which has its own statute of limitations—one year.

step process in determining the appropriate statute of limitations for actions under these civil rights statutes:

> (1) First, the court is to look to the laws of the United States;
>
> (2) Second, if no suitable federal rule exists, the court should consider the application of state common law, as modified and changed by the Constitution and statutes of the state; and,
>
> (3) Third, the court is only to apply state law if it is not inconsistent with the Constitution of the United States.

Wilson v. Garcia, 105 S. Ct. 1938 (1985) citing 42 U.S.C. § 1988.

In applying the three step process outlined in *Wilson,* the Fifth Circuit has held that in federal civil rights actions, the Texas two-year statute of limitations controls. *Longoria v. City of Bay City, Texas,* 779 F.2d 1136 (5th Cir. 1986) and *Peter Henderson Oil Company v. City of Port Arthur, Texas,* 806 F.2d 1273 (5th Cir. 1987). Therefore, the Court will apply a two year period of limitation in this case.[2]

(b) When did the Plaintiffs' cause of action accrue?

Civil rights actions accrue when the injured party knows or has reason to know of the injury which forms the basis of the action. *Longoria,* 779 F.2d at 1138.

In this case the alleged fraudulent transfer occurred

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2. The Court will apply the proscribed one year limitations period to the § 1986 claims. 42 U.S.C. § 1986.

in 1902.[3] However, the Plaintiffs assert that they were unaware of the transfer until shortly before this suit was filed.[4]

On the other hand, the Plaintiffs confirm that as early as October 2, 1961, they were actively engaged in efforts to recover the land.[5] Therefore, viewing the summary judgment evidence in a light most favorable to the Plaintiffs, they either knew or should have known of the injury which forms the basis of this action as early as October 2, 1961. Therefore, the Plaintiffs' causes of action would be barred after October 2, 1963, absent some circumstance that would suspend the running of the limitation period.

(c) Should the statute of limitation be tolled?

The Plaintiffs contend that any period of limitations should be suspended because Defendants fraudulently concealed the conveyance and denied access to the Panola County land records and courthouse.

In applying a state's period of limitation to a federal cause of action, the Court will also apply the relevant state law to the tolling of that period. [See *Johnson v. Railway Express Agency, Inc.*, 95 S. Ct. 1716 (1975)].

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3. Partial Abstract of Title in Support of Plaintiffs' Response to Defendants', Nevelyn Foshee, wife of Claude (H. C.) Foshee, Deceased and Ann Lewis Rives, Motion for Summary Judgment, Vol. III A, p. 2.

4. Plaintiffs' Response to Defendants' Motion for Summary Judgment, p. 6.

5. Plaintiffs retained the services of Philander S. Neville, a Chicago attorney, on October 1, 1961, to reclaim the subject property. Plaintiff's Answers to Defendant Texaco Oil Company's First Request for Admissions and Interrogatories, Requests for Admission No. 10 and No. 12.

Under Texas law, the two year period of limitations may be tolled for fraudulent concealment of material facts. *See Bordelon v. Peck,* 661 S.W.2d 907, 908 (Tex. 1983). However, fraudulent concealment only tolls the period "until the party learns of the right of action or should have learned thereof through the exercise of reasonable diligence." *Bordelon,* 661 S.W.2d at 908.

As previously stated, the Plaintiffs retained an attorney, Philander Neville, in October, 1961, to pursue their claims to the property. Therefore, the Plaintiffs knew of the right of action or at least should have learned thereof through the exercise of reasonable diligence as early as October, 1961.

Furthermore, although the Plaintiffs claim they were denied access to the county records, they also admit any denial of access or fraudulent concealment ended in 1973.[6]

This action was filed on October 1, 1984. By construing all of the pleadings and summary judgment evidence in a light most favorable to the Plaintiffs, their causes of action were barred by the end of 1975. Therefore, Plaintiffs' claims against all Defendants will be dismissed with prejudice. It is, therefore,

ORDERED that Defendants' motions for summary judgment are hereby GRANTED and that this action is hereby dismissed with prejudice as to all claims and Defendants.

SIGNED this 19th day of February, 1988.

/s/ WILLIAM M. STEGER
United States District Judge

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6. *Ibid,* Interrogatory No. 9 and No. 10.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TY-84-442-CA

ESTATE OF ARCHIBALD CORNETT, ET AL.

v.

ESTATE OF M. D. SIKES, ET AL.

(Filed February 9, 1988)

EXPERT WITNESS LIST

The Plaintiffs, Estate of Archibald Cornett, et al., wish to submit the names of the following expert witnesses to be used in the trial of the above entitled and numbered cause:

EXPERT WITNESS NO. 1:

Professor Rick Selzer
1330 New Hampshire, N.W.
Apartment #1010
Washington, D.C. 20036

Dr. Selzer will testify as to the probability of Plaintiffs uncovering the complained of actions and the probability of success had discovery of the events forming the basis of this civil action been earlier discovered. Dr. Selzer will testify as to the soundness of the historical approach to this case and the impact of the documented condition of Plaintiffs' race on their ability to identify or resolve the issues impacting their land. Dr. Selzer will also testify

concerning the social location of attitudes and customs that have impacted Plaintiffs and their inability to know the harm suffered. Dr. Selzer will rely heavily on his experience with the Ku Klux Klan in other civil rights cases and upon the treatises and other civil rights literature and history works included in Plaintiffs' Amended Complaint and Responses to Rule 12(b) and Summary Judgment Motions. Further, Dr. Selzer will rely on survey of the Counties comprising the Eastern District of Texas.

Dr. Selzer will also testify that the injuries sought to be addressed hereby were inherently unknowable until this lawsuit inasmuch as the events giving rise to those injuries were self-sealing, seal-concealing and self-executing against the locked out minority Plaintiffs.

EXPERT WITNESS NO. 2:

Dr. Linda Webb-Watson
3505 Turtle Creek, Ste. #114
Dallas, Texas 75219

Dr. Watson will testify to the inherently unknowable nature of the injury suffered by Plaintiffs and of the psychological block that existed relative to said injury. Further, Dr. Watson will testify concerning the conditions that existed that caused the unknowable nature of the injuries complained of in the complaint. Dr. Watson's testimony is also rooted in the factual history of the Plaintiffs and their race during the critical periods of divestiture and on examination of the Plaintiffs' representatives (oldest members of the family) relative to their psychological position and the events complained of herein. Dr. Watson will testify that Plaintiffs had no way of knowing or doing anything about their loss of the land sought to be returned as a remedy herein. Dr

Watson will testify that the events causing the loss complained of herein were self-sealing, self-concealing and self-executing and hence, inherently unknowable. Dr. Watson will testify that the Plaintiffs responded in a diligent manner considering the conditions under which they labored and that the natural consequences of their condition and status demanded the lethargic response complained of by Defendants.

Respectfully submitted,

Attorneys for PLAINTIFFS
HILL HICKS COLLINS
Attorneys and Counselors at Law

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CERTIFICATE OF SERVICE (Omitted)

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CIVIL ACTION NO. TY-84-442

ESTATE OF ARCHIBALD CORNETT, ET AL.
Plaintiffs,

v.

ESTATE OF M. D. SIKES, ET AL.
Defendants.

(Filed October 3, 1986)

SECOND AMENDED ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the above-captioned Plaintiffs, complaining of the above-captioned Defendants and in support of their complaint, would show the following:

I.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to Title 28 United States Code (hereinafter, "U.S.C."), Sections 1331 and 1343(a)(1)(2)(3) and (4).

Further, the action is peculiar to Black Americans and presents important questions arising under the 1st Amendment to the Constitution of the United States; the 13th Amendment to the Constitution of the United

Sates; the 14th Amendment to the Constitution of the United States, Section 1; and the Federal Civil Rights Acts of 1861, 1866, 1870 and 1871, 42 U.S.C. §§ 1981, 1982, 1983, 1985, 1986 and 1988 as hereinafter more fully appears. Jurisdiction is also invoked in conjunction with the Declaratory Judgment Action, 28 U.S.C., Sections 2201 and 2202, in that the relief requested includes, *inter alia,* a declaration that the Texas law on limitations of actions relative to land does not bar the return to Plaintiffs of the below described land from the Defendants who are current record owners of said land (surface and mineral estates) as a remedy. Further, the Plaintiffs request that Defendants be enjoined from exercising any and all ownership rights in said land and that the court declare Plaintiffs' rights in and to said land. Plaintiffs further invoke the pendent jurisdiction of the Court to consider claims arising under the Constitution and Laws of the State of Texas.

The value of the rights in question is in excess of One Million Dollars, exclusive of interests and costs.

II.

This civil action seeks as partial remedy the return of the following described premises (hereinafter referred to as the ACREAGE) located in Panola County, Texas on the East side of the Sabine River:

"A tract of 160 acres of land, more or less, in Panola County on the waters of Socagee Bayou, a tributary of Sabine River, about 17 Miles S. 59 E. from Carthage by virtue of his affidavit made before L.H. Adams a J.P. and Ex-Officio Notary Public of said County, November 12, 1887, in accordance with an act for the benefit of actual occupants of public lands approved May 26, 1873;

BEGINNING at N.W. corner of Russell Gray's 132-3/100 acre survey, a stake from which a maple brs. S. 40 W. 5 vrs. a do brs. W. 3 vrs. each marked RS; THENCE East 100 vrs. to a stake on sd Grays W bdy line for which a beech brs. N. 4 W. 5 vrs. a holly brs. N. 45 E. 10 vrs. each marked AC; THENCE North 700 vrs. to a stake from which a pine brs. W. 8 vrs. a do brs. N. 4 vrs. each marked AC; THENCE West 965 vrs. to a stake from which a pine brs. N. 60 E. 5 vrs. a do brs. N. 15 vrs. each mkd. AC; THENCE South 965 vrs. to a stake from which a pine brs. N. 10 W. 1 vrs. a R.O. brs. S. 5 W. 2 vrs. each marked AC; THENCE East 865 vrs. to a stake on W. boundary line of said Grays Survey from which a P.O. Brs. N. 60 W. 5 vrs. a R. O. brs. N. 45 W. each mkd. AC, THENCE North 265 vrs. to place of beginning; the land described above purports to be covered by a Patent from the State of Texas to ARCHIBALD CORNETT, No. 386, Vol. 20, dated January 19, 1888, filed for record in Panola County, Texas, April 20, 1888, and recorded Volume T, page 562 of the Deed Records of said County. *See* attached hereto and incorporated herein for all purposes Exhibits 1-A, 1-B and 1-C.

III.

The records on file in the General Land Office, Austin, Texas show that on April 3, 1871, Archibald Cornett "executed" Affidavit, No. 15 declaring that he was *bona fide* settled upon the subject land as vacant public domain, under an Act to regulate the disposal of the Public Lands of the State of Texas, which Act was approved August 12, 1870. Further, Archibald Cornett, swore that he had no other homestead. On April 3, 1871, Archibald Cornett applied for a survey of said 160 acres of land which application is termed a "Designation". Attached

hereto marked Exhibit "2" and made a part hereof for all purposes is a certified copy of that April 3, 1871, Affidavit and Designation.

On April 25, 1871, field notes of the requested survey were filed and on July 31, 1871, the District Surveyor of Panola County District, William Nelson, certified the correctness of same. On August 9, 1871, those same field notes were filed with the General Land Office in File No. 30. Attached hereto marked Exhibit "3" and made a part hereof for all purposes is a certified copy of said field notes.

Some sixteen years later, on November 12, 1887, Archibald Cornett supposedly executed a Proof of Settlement perfecting title to the above-stated 160 acre tract of land. The records show that Archibald Cornett signed using an "x" this time. Attached hereto marked Exhibit "4" for all purposes is a certified copy of that Proof of Settlement.

The above-described land is located in the Galloway Community in what was at one time, commonly referred to as the "Flatwoods", Attached hereto marked Exhibit "5" for all purposes is a copy of a Certificate of Death for Archibald and Sally Cornett's first son, Mongo, which Certificate is issued by the State of Louisiana under State File No. 5824 (See items 9a and 9b., thereon).

IV.

The records of the Louisiana State Board of Health (Bureau of Vital Statistics) contain the Certificate of Death of ARCHIBALD CORNETT.[1] The personal and

1. ARCH CORNETT was the full name on that Certificate of Death.

statistical particulars contained on said Certificate shows that ARCHIBALD CORNETT was about 77 years old when he died in 1915 in DeSoto Parish, Louisiana near Keatchie. Finally, said Certificate shows that ARCHIBALD CORNETT was a farmer from Missouri with family unknown. The paucity of facts making up ARCHIBALD CORNETT'S Certificate of Death and the inconsistencies appearing in paragraph III, above, are directly and intentionally related to "iron-safe" racial attitudes, codes, customs, institutions, laws, prohibitions, and traditions existing in the great States of Louisiana and Texas.[2]

According to his reputation among members of his family and among his associates in the "community" See footnote 2, *ante,* sometime in the late 1850's - early 1860's, ARCHIBALD CORNETT (along with several adventurous friends) left Missouri and came to Texas. ARCHIBALD CORNETT was an intelligent and literate man who could read and write, and did so, independently, until his death.

ARCHIBALD CORNETT was a Confederate soldier in the Civil War. After the Civil War, ARCHIBALD CORNETT met SALLY WILLIAMS, a 14 year old Texas woman. ARCHIBALD CORNETT and SALLY WILLIAMS "jumped the broom" and began living together in the sight of God as man and wife. Eleven children were born to that common law marital union

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2. While this case rests upon Texas events, certain incidents relative to the State of Louisiana accent the general condition of this part of the United States during the relevant period of time herein. Further, certain parts of Louisiana (in particular DeSoto Parish) combine with the "Galloway Community (The 'Flatwoods')" and Shelby County, Texas, to make up the "relevant community" for purposes of this civil action.

between ARCHIBALD CORNETT and SALLY WILLIAMS CORNETT, which union spanned fifty (50) years. Archibald and Sally's two oldest children, Julie and Mongo Cornett, were born on the above-described land.

ARCHIBALD CORNETT had no alias or assumed names or identities. ARCHIBALD CORNETT had no wife, children or relatives in Texas or Louisiana other than SALLY WILLIAMS CORNETT and the issue of their bodies. "Aster" Cornett never received a power from Archibald and/or Sally to deal with their land. "Aster Cornett was not related in any way to Archibald and/or Sally. "Aster" Cornett was a fraudulent name used to divest Plaintiffs of the Acreage. These facts are estab-- lished by Archibald and Sally's reputations among members of their family, among their associates and in the relevant community.

V.

Many of the above-stated facts in paragraph IV., above, on their face indicate a normal red-blooded American family, except that Archie and Sally's association, marriage and procreation were regarded as unnatural and immoral. Further, the issue of ARCHIBALD CORNETT and SALLY WILLIAMS CORNETT had fixed and impressed upon it, inter alia, the stain or stigma of bastary. The *raison d' etre* for this type of stigmatizing is found in the race and previous conditions of servitude of SALLY WILLIAM CORNETT, i.e., she was Black and an ex-slave, and ARCHIBALD CORNETT was, of course, white. Based on the color of Sally Williams Cornett, the Cornetts were driven out of Panola County, Texas by a legitimized terroristic force known as the Ku Klux Klan. The attitude of the Klan was, generally, the attitude of

the State of Texas and Panola County and the Confederate South. That attitude has never died and lives on today. See attached for all purposes and marked as Exhibit "6" *The Klan, Yesterday and Today* (A compilation of Klan activity collected at the Schomberg Institute of Black Culture in Harlem, New York). Dr. Rick Seltzer, Associated Professor of Political Science at Howard University, conducted research on the Klan's activities in *Walker, et al., v. Butkovich, et al.,* Civil Cause No. 80-605-G, USDC M.D. N.C., commonly known as the "Greensboro Ku Klux Klan and American Nazi Party Trial", wherein Klan and Nazi party members were on trial for killing five (5) members of the Communist Worker's Party at a demonstration. That survey and a subsequent article (Chattanooga Klan Study) show that the attitude of the 1800's maintains, throughout many areas of the country, including Texas. Attached hereto for all purposes and marked Exhibit "7" is a copy of *"The Social Location of Attitudes Towards the Ku Klux Klan"* authored by Dr. Seltzer. Plaintiffs intend to use the foregoing survey and article by Dr. Seltzer as well as Dr. Seltez's testimony pursuant to *inter alia,* FED. R. EVID. 803(24) and 804(b)(5). Dr. Seltzer's testimony, survey and article will be combined with a current or contemporary survey covering the counties comprising the Eastern District of Texas including some that make up the Lufkin Division to prove that the iron-safe racial attitudes, codes, customs, institutions, laws, prohibitions and traditions existed and exist in the relevant "Community". (See footnote 2, *ante*).

Also relied on by Plaintiffs pursuant to FED R. EVID. 803(24) and 804(b)(5) are:

1. Dr. Linda Webb-Woodard's report and/or testimony combine with Dr. Seltzer's foregoing reports

surveys, and testimony tracing the history of Black people since the Mayflower which history bears out that there was an active effort by Defendants and their ancestors to deny the rights of citizenship to Blacks, which effort continues to this day in Panola County, Texas. Further, Dr. Webb-Woodard's report and testimony, which rely in part on the below publications, will be offered to show the "condition" of Blacks from the stand point of attitudes, law, physical violence and intimidation and the role of "science" in the oppression of Black people. The control of Blacks claiming land through ruthless means without absolutely any representation and with entrenched laws, e.g., statutes of limitations, to effect that control, and the justification and maintenance of said conditions and attitudes, all support Plaintiffs theory for relief.

2. NAACP, *THE CRISIS* Magazine, . . . *A Tough Row to Hoe,* Vol. 93, No. 2 (February, 1986). This article examines the 120 year old field of "voting rights" and finds that, for Blacks, its been . . . a tough row to hoe. This lack of participation in government and the political process is intricately interwoven into Plaintiffs' argument that based on their lack of basic freedoms, Plaintiffs existed in an extraordinary condition which made for extraordinary concealment which lead to the acreage being taken and such critical facts and their partisulars being hidden from Plaintiffs.

3. Lerone Bennett, Jr., *Before the Mayflower—A History of Black America* (5th Ed. 1969). Lerone Bennett, Jr., is a Social Historian and the author of nine books on the life and history of Black Americans. Mr. Bennett has served as advisor and consultant to several national organizations and commissions, including the National Advisory Commission on Civl Disorders. This book and its chapters on *inter alia,* Black Powers in the Old South, The

Life and Times of Jim Crow, and Red, White and Black: Race and Sex, are relevant to show the condition under which Plaintiffs labored at the time the Acreage was fraudulently taken and that currently exists.

4. C. Eric Lincoln, *The Negro Pilgrimage In America,* (4th Ed. 1967). Again, this book chronicles the condition of the Plaintiffs and the iron-safe attitudes, customs, codes, traditions, etc., that have impacted Plaintiffs relative to the Acreage.

5. Chuck Summer Stone, *Black Political Power In America* (1970). This book discloses the various extralegal machinations and incredible savage acts of white brutality against Blacks attempting to exercise their civil rights and is relevant to understanding how and why Plaintiffs were denied the one commodities needed to achieve self-support—land and the vote.

6. Charles E. Silberman, *Crisis In Black And White* (1964). This book combines with the foregoing books, reports and testimony to provide a meaningful and robust analysis of the conditions under which Plaintiffs have labored and during which the Acreage was forcefully and fraudulently taken.

7. Depositions and affidavits secured since this civil action was instituted that show the truth of the matters in paragraph V.1., through V.6., above, and as they relate to Plaintiffs and Defendants herein.

See also FED. R. EVID. 803(1), (3), (13), (14), (16), (18), (19), (20), (21), and 804(b)(4).

VI.

Plaintiffs specifically allege historical facts for the purpose of showing the degraded and subservient condition

of SALLY WILLIAMS CORNETT and her race and anyone associated with her race, during her lifetime. Plaintiffs rely on such historical facts for the purpose of showing the fixed opinions, practices and policies, concerning SALLY WILLIAMS CORNETT'S race, upon which certain white people in control of positions, power and government spoke and acted and, until recently, continued to speak and act. Further, Plaintiffs rely on said historical facts to establish the general reputation of the State of Texas and its political subdivisions during the period of time herein involved.

Plaintiffs contend that ARCHIBALD CORNETT, SALLY WILLIAMS CORNETT and their issue remained in a subservient condition during the time in which the ACREAGE or any portion thereof was unconstitutionally taken. Indeed, the conditions of all persons of African ancestry and any person associated with those persons, was unlike that of any race of people, including the Native American Indian. While other races were free and independent people, SALLY WILLIAMS CORNETT and her race remained subject to the authority of the white race. Although the ante bellum *de jure* institution of slavery was "officially" abolished, SALLY WILLIAMS CORNETT had no rights or privileges but such as those who held the local power and/or the government choose to grant her race.

Having been enslaved for over several centuries, SALLY WILLIAMS CORNETT'S race was regarded as beings of an inferior order. They were altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man and his system was bound to respect.

Any white person strongly associated with Blacks was treated just like the Black race.

Righteous thinking white people with the capacity to assist Blacks declined to do so for fear of losing family, social and economic security. There were no real forums for relief available to Blacks and those closely associated with Blacks. Blacks and those associated with Blacks had no representation in government or otherwise in Panola County, Texas during the relevant period herein involved. The association of ARCHIBALD CORNETT and SALLY WILLIAMS CORNETT yielded Archibald, Sally and their heirs no representation in government or otherwise in Panola County, Texas during the relevant period herein involved.

Prior to the Emancipation Proclamation, SALLY WILLIAMS CORNETT and her race were bought and sold, and treated as ordinary articles of merchandise and traffic, whenever the masters could profit by it or whenever some other interest of the ruling race could be served. This opinion was at that time fixed and universal in the civilized portion of the white race in Panola County. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute, and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as matters of public concern, without doubting for a moment the correctness of this type of attitude or thinking which appears of record in Panola County, Texas. Indeed, this type of condition was transmitted from generation to generation as positive social values similar to patriotism, religion and good manners. Further, this condition amounted to classic pathology with the usual destructive behaviour: acting out, denial

of reality, projection, transference of blame, disassociation and justification. Local and County government was intricately involved and participated in the transmission and maintenance of said condition.

Up to the late 1970's, certain white people in Panola County continued to treat SALLY WILLIAMS CORNETT'S heirs and their race as an inferior class, and to subject them to strict police regulation, drawing a broad line of distinction between the white citizenry and Blacks. Those whites were operating privately and with State action or inaction upon the same ante bellum fixed principles regarding Blacks and, substantively, in the same manner as heretofore described.

Said white people, operating under said system of laws, customs and traditions and at their pleasure, withheld the privileges and immunities necessary to defeat ARCHIBALD CORNETT and SALLY WILLIAMS CORNETT and their descendants' rights to hold property as freed people. There were no real forums for relief available to Blacks and those closely associated with Blacks.

Finally, respecting the historical basis for this case, Plaintiffs allege that it cannot for a moment be supposed that a class of persons thus separated and rejected from those who formed the rule power of control in Panola County would be automatically, in fact, transformed into full class citizens by the pen. Certain white people in Panola County, Texas, continued to regard the Black race as objects over which they were the master and worked at denying that race and those associated with Blacks the rights to hold real and personal property and to freedom of association. This *denial or disability was clearly* and inextricably related to the Black race's previous condition

of servitude and, as such, was an incident and badge of slavery. Thus, perpetual and impassable barriers were erected between the white population and Blacks and those associated with Blacks based solely upon the race of the Blacks. These certain white men, including the Ku Klux Klan, with the aid and under the color of state law, acted to divest these racially, suspect and heavily laden people of their right to hold land and all the rights, privileges, and immunities appertaining to that right. Under the Federal Constitution, and, at the very least, the right to hold property meant and means the right to the same freedoms enjoyed by white citizens in monitoring, defending, and passing said property. Of course, as undisputed history shows, the latter was not generally true and of course, one class benefited and continues to benefit (whites not associated with Blacks and their descendants) and another class suffered and continues to suffer (ex-slaves and their descendants). SALLY WILLIAMS CORNETT and her heirs race had fixed upon them a stigma of the deepest degradation, that made it virtually impossible to hold or inherit land or substantial amounts or choice pieces of land in Panola County, Texas. Plaintiffs allege that stigma as an incident and badge of slavery.

Two separate and distinct societies existed based on laws, customs, codes, rules, regulations and tyranny. Those same laws, customs, codes, rules, regulations, along with tyranny, blocked any reasonable expectation of discovering and resolving the fraud and continuous, individious, insidious civil rights violations affecting ownership of the Acreage.

Defendants got control and possession of the land due to the extraordinary closed society of the white race, which was self-executing, self-sealing and self-concealing

undiscoverable fraud and SALLY WILLIAMS CORNETT and her heirs' and race's extraordinary condition of servitude, i.e., their legal and customary inability to refuse the commands of whites, lack of protection from the local law enforcement, inability to check the records, inability to correct records respecting the ACREAGE, private conspiracies, with and without government involvement and sanctions, implied and express, officials acting with reference to race under color of state law, *de facto* authorization of white men to continue the once sanctioned practices of masters and encouragement of those practices by the participation of and/or intentional lack of law enforcement by government officials. This extraordinary condition of servitude and extraordinary closed society of the white race produced extraordinary concealment of the fraud and civil rights violations affecting ownership of the Acreage.

Indeed, the combined effect of the several different sources of government control or support operating on an institutional basis and under the described system (Sheriff Department-Deed Records-Judicial Enforcement) made it impossible to contest or prevent the complained of unconstitutional taking of the ACREAGE. The above-stated events of general history form the reputation in Panola County arising before this civil action, as to customs affecting lands in the "Community," and reputation as to events of general history in the whole of the State of Texas relative to Blacks and those closely aligned with Blacks.

VII.

The history of the condition of Blacks in Texas relative to their inability to hold property based solely on their

race and previous condition of servitude was combined with fraudulent and concealed real property transactions under color of state custom and law. This system of divestment and "terrorism" was intentionally established by local government officials through direct involvement or through knowing acquiescence and through the administering of laws and customs specifically directed at the recently freed slaves and their descendants.

VIII.

The personal and family history of the CORNETT family show that ARCHIBALD CORNETT was a fair-minded white Texas citizen who apparently then believed in the self-evident truths that all men are created equal; that they are endowed with certain inalienable rights, among which are life, liberty, and the pursuit of happiness. ARCHIBALD CORNETT and SALLY WILLIAMS CORNETT fully paid for and owned, in fee simple, the ACREAGE. Indeed, the "root of title" as aforestated was in a Patent from the State of Texas.

IX.

Neither ARCHIBALD CORNETT nor SALLY WILLIAMS CORNETT ever conveyed any portion or parcel of the ACREAGE to anyone outside the CORNETT family. Neither ARCHIBALD CORNETT nor SALLY WILLIAMS CORNETT ever conveyed any of the land to their children. Neither ARCHIBALD CORNETT or SALLY WILLIAMS CORNETT nor any of the CORNETT heirs ever caused any portion or parcel of the ACREAGE to be placed, directly or indirectly, in the market place.

X.

Neither ARCHIBALD CORNETT nor SALLY WILLIAMS CORNETT nor any of the CORNETT heirs ever assigned, mortgaged or leased or in any way encumbered or caused a lien, charge or other burden to be placed on the ACREAGE. Any and all liens, charges or other burdens ever placed on the ACREAGE, were done so fraudulently and by a group of conspirators (aided and abetted by local officials) acting to perpetuate the institution of slavery or a condition of servitude as close to that of slavery as was possible.

The CORNETTS have always been denied substantive and procedural defense of the ACREAGE. Further, the Cornetts have always been denied substantive and procedural due process and equal protection relative to bringing any and all claims for said acreage or relative to alleging the critical facts necessary to this complaint based on the extraordinary self-executing, self-sealing, and self-concealing condition under which they labored.

XI.

The boundaries of the ACREAGE and the fact that that ACREAGE belongs to the above-captioned CORNETT estate and heirs are confirmed and verified through, *inter alia,* the Deed Records in Panola County, Texas, the records in the General Land Office and the CORNETTS' personal or family history and the general and specific history of this southern slave state.

XII.

SALLY WILLIAMS CORNETT and her heirs and their race have been intentionally denied "fundamental"

rights guaranteed in the United States Constitution based on their race and previous condition of servitude coupled with their association with ARCHIBALD CORNETT. That a white man could not marry a Black woman was an incident and badge of slavery. That the issue of that interracial marriage was prohibited from inheriting the aforementioned property is another and continuing incident and badge of slavery.

XIII.

Plaintiffs have the same right as is enjoyed by the white citizens to inherit, purchase, lease, sell, hold, and convey real and personal property. Plaintiffs also have the same right as is enjoyed by the white citizens to exclude persons from their property and birth right, the ACREAGE.

Prior to October 2, 1984 "equal opportunity" and equal protection and due process of law were guaranteed by the 14th Amendment to the United States Constitution. This should not have been only in words. The facts and circumstances indicate whether equal opportunity, equal protection and due process really exist with substance. An intentional and entrenched system of activities, disciplines, interpretatons, laws and social customs prescribing and proscribing the life of Plantiffs and their ancestors overruled and operated instead of the United States Constitution. The results were, of course, unconscionable, invidious laws and customs that directly and intentionally operated insidiously and disparately against one race, Blacks, based on their race and previous conditions of servitude and a redistribution of land holdings away from the Plaintiffs and to Defendants.

XIV.

The ACREAGE has been passed around among the same circles of officials and private citizens through openly fraudulent and larcenous transactions, supported by threats of physical harm and affirmative shows of encouragement and force by law enforcement officials. The System of Recordation in Panola County, Texas has been a tool employed to illegally divest the Estates of ARCHIBALD CORNETT and SALLY WILLIAMS CORNETT and their beneficiaries and heirs of all of the ACREAGE based solely on SALLY WILLIAMS CORNETT'S race and ARCHIBALD CORNETT'S association with her The series of events leading to this civil action were not misfortunate and unintended but were a pattern and routine practice directed at Plaintiffs' race. The denial of wrong doing by county officials and employees and their excuses offered to explain how someone other than Archibald, Sally or their heirs could exercise ownership rights with the Acreage amounts to more than bare violations but are part of an aggravating circumstance. Further, the natural, probable and foreseeable result of enforcing a dual system of recordation and not protecting Plaintiffs' race from Klan and white hate activity was to cause land holdings in Panola County and the whole of Texas to shift by fraud and terror from Blacks to Whites and hence to increase or perpetuate the condition of servitude, e.g., slaves could not hold, own or inherit land and Archibald and Sally could not hold or own land and Plaintiffs can not inherit same based on Sally's race and the Plaintiff's race. The county officials acted against the Plaintiffs due to *de jure* and *de facto* racial classifications that had and continue to have reasonably foreseeable discriminatory effect and were customs and

policies applied and currently applied in an intentionally, discriminatory manner.

XV.

White men not married to Black women were securing to themselves and their beneficiaries and heirs and successors in interest, stability and posterity at the expense of Plaintiffs and Plaintiffs' race who were yet heavily laden with the incidents and badges of slavery, e.g., banishment, compulsory service to what the white man commanded, restraint of personal movements, disability to hold property, inability to be a true party in Court or be a credible witness against a white person. ARCHIBALD CORNETT, although white, had the stigma after this open marriage to SALLY WILLIAMS CORNETT and as such did not have secured to him rights considered essential to civil freedom, such as the right to make contracts, sue and be sued, give evidence, inherit, hold and dispose of property although those rights were secured to the white citizenry free of the stigma.

Plaintiffs request this Court to now declare and vindicate said fundamental rights which appertain to the essence of citizenship, and the enjoyment of or deprivation of which constitutes the essential distinction between freedom and slavery.

Plaintiffs assert that it is fundamentally unfair and unconscionable that Plaintiffs be intentionally held down while fraud is practiced against them and prohibited from defending their land due solely to their race and previous extraordinary, self-sealing, self-executing, and self-concealing condition of servitude with no effective course of redress at any level of government and then

have the Texas limitations of actions statutes applied against them. Indeed, the state custom and law was such that SALLY WILLIAMS CORNETT and her heirs and race and any person associated with them were just as restricted in their relations relative to whites as they were in slavery. The attitudes, codes, customs, institutions, laws, prohibitions and, traditions during formal slavery continued to persist and pervade the community wherein the ACREAGE is located and such attitudes were manifested in sometimes more subtle and "sophisticated" forms and at other times in cruel, violent and summary fashion. Those attitudes, customs, laws and traditions were directed specially and intentionally toward Blacks based solely on their race and previous condition of servitude. Those attitudes, customs, laws, and traditions operated to specially deny Plaintiffs and their race in general, the very rights, privileges and immunities that were at a minimum necessary to ever have a chance at true civil freedom in, *inter alia,* owning, holding, inheriting and disposing of the ACREAGE, *e.g.,* recording marriage and other muniments affecting the land.

Plaintiffs never had those minimum and basic freedoms generally enjoyed by the white citizenry that did not associate with Blacks. Plaintiffs' ctizenship was severely restricted when it came to judicially or extra-judicially disputing, contesting, fighting for or insisting on their rights or making the sort of contacts currently enjoyed. There was no equal protection of the laws relative to the ex-slave SALLY WILLIAMS CORNETT and her heirs and, in general, her race and those associated with said race. Plaintiffs contend that under these circumstances, they were and are denied equal protection and due process of the law (substantive and procedural).

Plaintiffs contend that the attitudes, codes, customs, institutions, laws, prohibitions and, traditions complained of herein were so dominant that many good people were discouraged from standing-up against the conspicuous racial codes and customs by social, physical and financial considerations. Plaintiffs contend that, generally, any fair approach relative to SALLY WILLIAMS CORNETT and her heirs and race by whites jeopardized the latter just as if they were themselves black, i.e., they had the stigma.

XVI.

Any and all Parties who have dealt with the ACREAGE or parcels thereof had specific knowledge of the institutional fraud and the history of civil rights violations practiced on the Plaintiffs. Indeed, the only reason those parties were able to deal with Plaintiffs' property, the ACREAGE, was due to the systemic denial of true citizenship and their knowledge that under the self-sealing, self-executing, self-concealing system, Plaintiffs would never find out n time to contest the ownership under the laws as written.

Plaintiffs, however, were totally ignorant of the operative facts until this lawsuit began which facts were concealed intentionally by the established system. The extraordinary circumstances under which Plaintiffs lived lead to this extraordinary concealment which went to the critical element of ownership and citizenship. Once the Klan and their system had closed the courthouse door to all Plaintiffs it was of little significance that the Defendants and their predecessors in interest continued to support the concealed fraudulent ownership, and the historic civil rights violations, which facts are well known in the

"Flatwoods" according to life-long resident, Juanita Walker, a white woman. Defendants have actively concealed information that prevented Plaintiffs from knowing or alleging crucial elements of their present claim.

XVII.

Prior to the filing of this civil rights lawsuit, Plaintiffs have never been successful in securing the services of any attorney who recognized the nature of their claim or who was willing to say, although true in every respect, the things alleged herein.

Fraud and larceny when practiced against free people is particularly reprehensible. Fraud and larceny practiced against enslaved people who have absolutely no legitimate chance of recognizing and curing such, based soley on race and the extraordinary conditions of servitude and extraordinary closed society of the white race, is uncivilized and offends the basic cornerstones of the United States Constitution. Protection of Plaintiffs' constitutional rights does not and should not lessen with the mere passage of time under the circumstances of the case. This concept has recently been manifested in cases involving Native Americans and Japanese Americans. To effectively bar ARCHIBALD CORNETT and SALLY WILLIAMS CORNETT, their heirs and the Black race from monitoring and defending the ACREAGE until some statute of limitation period has run was intentional and is unconstitutional. Any state laws that purport to cut off the Plaintiffs' rights herein are unconstitutional and offend all notions of fair play and substantial justice, and under the facts and circumstances, are inconsistent with the First Amendment and the federal law and policies of the 13th Amendment prohibiting slavery and incidents and badges

thereof and 14th Amendment equal protection and due process.

XVIII.

Further, Plaintiffs assert that fundamental principles of justice so rooted in the traditions and conscience of a civilized people compel restoration of any and all portions of the ACREAGE, presently being possessed or held by persons other than CORNETT heirs for the above violations of Plaintiffs' civil rights.

Plaintiffs contend that the tenor and condition of the times relative to SALLY WILLIAMS CORNETT and her heirs and those associated with their race, along with the various conspiracies to intentionally violate Plaintiffs' civil rights to freely associate, make contracts, sue and be sued, give evidence, inherit, hold and dispose of property, should shock the conscience of this Court and require exercise of all the power and cognizance that can ever be raised in equity.

XIX.

Plaintiffs would show that certain Defendants' actions as enumerated herein were willful and malicious, and that therefore Plaintiffs are entitled to punitive damages.

No one has ever peaceably taken possession of Plaintiffs' land. Possession and perfection of record ownership were done through systematic terrorism of the Cornett family based on Sally Williams Cornett's race and Archibald's marriage to her. The marriage could not even be recorded in the records. Sally couldn't even sign a deed or other document relating to the land. All these civil rights violations coupled with fraud and terror to acquire Plaintiffs' land is well known in the Flatwoods as testified

to by Mrs. Juanita Walker and her deposition taken in this civil action. The record owners, past and present, the oil companies, and the County of Panola knew about these facts and circumstances and, in fact, participated because it was a way of life with two separate and distinct societies, one dominant and one basically slave. The County of Panola, and its officials, having knowledge of these egregious conspired wrongs to defeat Plaintiffs of their rights had the power to prevent or aid in preventing the commission of the same, neglected or refused to do so based on the foregoing "class-based invidiously discriminatory animus". Further, based on the foregoing conditions, facts and circumstances there was, up to the filing of this civil action, "inherently unknowable injury" to Plaintiffs and their class or race.

No "curative" proceedings were ever undertaken. No demand was ever made by any of the Defendants or their predecessors in the title that all "muniments of title"—i.e., all the original deeds or other instruments upon which title depended—be produced. Indeed, none of the interlopers in the recorded chain of title ever investigated and gave a *bona fide* appraisal of the title of their respective grantor's before completing their purchases. When a purchaser of land accepts a deed of conveyance from his grantor, he assumes the "risk of loss" by reason of the assertion of outstanding claims against the land that are not "stale" or otherwise "time barred."

The Texas "recording acts" have always provided that, unless recorded, certain "instruments affecting land titles" shall be void as against subsequent purchasers of the land to be affected. Instruments affecting land titles are "marriage certificates, heirships affidavits, and statements otherwise concerning marriage, birth and death."

XX.

Plaintiffs hereby demand a jury trial.

XXI.

Plaintiffs have retained Donald W. Hicks, Sr., of the law firm of Hill Hicks Collins, Attorneys and Counselors at Law, to represent them in the vindication of their rights in this matter and have promised to pay Mr. Hicks and the firm reasonable attorneys' fees in consideration for such representation. Pursuant to 42 U.S.C. § 1988, Plaintiffs would show they are entitled to reimbursement by Defendants of their reasonable attorneys' fees.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Court take Judicial Notice of the following:

a. That from 1861 through 1970, the Congress of the United States of America prepared and passed legislation which sole purpose was the elimination of racial discrimination by federal, state and private parties;

b. That from 1861 until 1983, Black people in Panola County could not forcibly reclaim land or use self-help to reclaim land that was forcefully taken and/or held by any white man claiming a superior right thereto;

c. That the records of the federal court and circuit in which this Court sits cannot find in its backlog of cases dating from 1861 through 1983 any suit wherein any black man or woman successfully gained ouster or brought reclamation actions against any white man or woman in Panola County, Texas.

FURTHER, PREMISES CONSIDERED, Plaintiffs pray for:

1. A declaratory judgment declaring the present record owners as trustees holding said ACREAGE or portions thereof in constructive trust for the benefit of Plaintiffs based on First Amendment and Thirteenth Amendment violations and violations of due process and equal protection of laws under the Fourteenth Amendment.

2. A declaratory judgment declaring Texas' Statutes barring actions to recover land unconstitutional as applied to Plaintiffs.

3. A declaratory judgment that Plaintiffs and their ancestors had no capacity to resolve this matter prior to this civil action being brought and that Plaintiffs causes of action were inherently unknowable until October 2, 1984 due to the self-executing, self-concealing nature of Panola County, Texas and/or State of Texas' racially, dual systems of recordation and citizenship.

4. A declaratory judgment that Plaintiffs cause of action under their condition was not reasonably knowable by Plaintiffs and/or that Plaintiffs' ignorance was induced by all Defendants and/or their predecessors-in-interest's conduct.

5. A declaratory judgment declaring that Plaintiffs civil action is not barred by laches.

6. A declaratory judgment declaring that Plaintiffs have labored under extraordinary conditions that have caused extraordinary concealment of crucial elements of their complaint.

7. A declaratory judgment declaring that under the facts of this case no person or entity other than the sovereign governments of the United States and of the State of Texas has a greater and superior right to the ACREAGE than the CORNETT heirs.

8. A declaratory judgment declaring that Defendents hold legal title to the ACREAGE or portions

thereof as a result of denials to ARCHIBALD and SALLY WILLIAMS CORNETT, their heirs and the Black race of full and equal benefit of the laws and proceedings of Panola County, in violation of 42 U.S.C. § 1983.

9. A declaratory judgment declaring that Defendants hold legal title to the ACREAGE or portions thereof as a result of ARCHIBALD CORNETT and SALLY WILLIAMS CORNETT, their heirs (Plaintiffs) and race being deprived of their rights, privileges and immunities under color of state custom or law in violation of 42 U.S.C. § 1983.

10. A declaratory judgment declaring that Defendants hold legal title to the ACREAGE due to ARCHIBALD CORNETT and SALLY WILLIAMS CORNETT, their heirs (Plaintiffs) and the Black race having been denied the same rights as are enjoyed by white citizens in the County of Panola, State of Texas, to inherit, purchase, lease, sell, hold, and convey real and personal property in violation of 42 U.S.C. § 1982.

11. A declaratory judgment that Defendants hold legal title to the ACREAGE due to certain Defendants' violations of 42 U.S.C. § 1985(3).

12. A permanent injunction be entered enjoining Defendants from exercising any ownership rights in the Acreage.

13. A permanent injunction be entered enjoining Defendant County of Panola from prohibiting Plaintiffs from paying taxes on the Acreage or exercising ownership in or to the Acreage.

14. Judgment issue decreeing that Plaintiffs recover a sum to be determined in an accounting to be rendered as ordered by this Court.

15. Judgment be entered in favor of Plaintiffs against certain Defendants for the violations enumerated herein (in amounts to be determined by this Court) for: (a) punitive damages, (b) costs of Court, and (c) reasonable attorneys' fees for maintaining such a racially, dual unconscionable system that formed the moving force behind as was the *sine qua non* for Plaintiffs' complaint.

16. Judgment for such other and further relief, at law or in equity, as to which these Plaintiffs may by this pleading or proper amendment thereto show themselves justly entitled.

Respectfully submitted,

Hill Hicks Collins
Attorneys and Counselors at Law
Renaissance place
714 Jackson Street, Ste. 530
Dallas, TX 75202

By /s/ DONALD W. HICKS, SR.
Donald W. Hicks, Sr.
Attorney for Plaintiffs

CERTIFICATE OF SERVICE (Omitted)

ABSTRACT

1. PATENT, dated January 19, 1888, filed for record April 20, 1888, recorded in Volume 1, page 562, Panola county Deed Records.
   FROM: State of Texas
   TO: Archibald Cornett
   Patent to One Hundred Sixty Acres of Land

2. DEED, dated October 10, 1902, filed October 18, 1902, Recorded in Volume 9, page 603, Panola County Deed Records.
   FROM: Aster Cornett
   TO: M. D. Sikes
   Consideration: $80.00
   Conveys: 160 acres A. Cornett Headright Survey

3. DEED, dated December 18, 1905, filed January 17, 1906, recorded in Volume 12, page 349, Panola County Deed Records.
   FROM: M. D. Sikes
   TO: R. J. Dunn
   Consideration: $160.00
   Conveys: 80 acres Archibald Cornett Survey

4. DEED, dated January 23, 1907, filed June 22, 1907, recorded in Volume 18, page 567, Panola County Deed Records.
   FROM: R. J. Dunn
   TO: Louis Werner Saw Mill Co.
   Consideration: $156,000.00 as follows: $89,572.00 cash and one promissory note of even date herewith for the sum of $66,428.00 due on or before one year after date with interest from date paid at the rate of six per cent per annum.
   Conveys: Among other lands, the S ½ of the Archibald Cornett Survey.

5. RELEASE VENDOR'S LIEN NOTE, dated January 30, 1908, filed February 20, 1908, recorded in Volume 19, page 369, Panola County Deed Records.
   FROM: R. J. Dunn
   TO: Louis Werner Saw Mill Co.

Releases Vendor's Lien Note retained in Deed recorded in Volume 13, page 567, Panola County Deed Records, which was a Deed from R. J. Dunn to Louis Werner Saw Mill Co. in which R. J. Dunn retained a Vendor's Lien in the amount of $66,428.00.

6. DEED OF TRUST, dated February 1, 1911, filed April 22, 1911, recorded in Volume 4, page 402, Deed of Trust Records, Panola County, Texas.
FROM: Louis Werner Saw Mill Co.
TO: St. Louis Union Trust Co. and Neil A. Mc Millan Trustees
Consideration: $600,000.00
Due Date: February 1, 1914; August 1, 1914; February 1, 1915; August 1, 1915; February 1, 1916; August 1, 1916; February 1, 1917; August 1, 1917; February 1, 1918; August 1, 1918; February 1, 1919 and August 1, 1919.
Description: South ½ of Archibald Cornett Survey, Abstract No. 154, Patent No. 386, Volume 20, issued to Archibald Cornett, January 19, 1888, recorded in Volume G, page 562 and containing 80 acres more or less.

7. DECLARATION OF TRUST, dated April 23, 1936, filed June 21, 1937, recorded in Volume 124, page 290, Panola County Deed Records.
FROM: F. R. Pierce, et al
TO: The Public
Louis Werner Saw Mill Co., for and in consideration of $10.00 an over valuable considerations, and pursuant to a resolution of its Board of Directors on April 22, 1936, did grant and convey to F. R. Pierce and C. S. Chesbro, Trustees, all lands owned by said corporation in Panola County, Texas, subject to certain oil and gas leases, and other easements therein described. Now, the said F. R. Pierce and C. S. Chesbro declare that the land so conveyed is the property of the following people in the interest so stated:

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRIC OF TEXAS
TYLER DIVISION

CIVIL ACTION NO. TY-84-442

ESTATE OF ARCHIBALD CORNETT, ET AL
Plaintiffs,

v.

ESTATE OF M. D. SIKES, ET AL.,
Defendants.

(Filed January 19, 1988)

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiffs, principally descendants of the union between a white ex-confederate soldier and an black ex-slave "ARCHIBALD CORNETT AND SALLY WILLIAMS CORNETT" and file this their Response to Defendant Texaco Oil Company's ("Texaco") Motion for Summary Judgment and would show the Court the following:

I.

Incorporated herein by reference as if set forth fully and verbatim and intended for all purposes is Plaintiffs' prior responses to the Motion for Summary Judgment

AND Rule 12(b) Motions filed by the remaining present day surface and leasehold owners of the disputed land known even today as the "ARCHIBALD CORNETT SURVEY" [hereinafter referred to as "Acreage"].

II.

In paragraph I of Texaco's Motion for Summary Judgment, Texaco alleges that based on "a deed executed from 'Aster Cornett' to M. O. (sic) Sikes conveying the acreage, Plaintiffs "have filed this civil rights lawsuit." Any plain and simple reading of Plaintiff's pleadings (Amended Complaint and said Responses to the other Defendant's Motions for Summary Judgment) shows that the simple conveyance by deed is not the sole basis for this civil action. Succintly stated, this civil action arises out of that fraudulent conveyance coupled with continuing *de jure* and *de facto* racially dual systems of recordation, notice and law enforcement relative to black and racially mixed Plaintiffs' ability to own, hold, lease or otherwise deal with land in the ex-slave State of Texas. Further, the gravamen of Texaco's Motion appears to be that Plaintiffs have not met the heightened pleading requirement of Federal Courts in similar civil rights civil actions and that Plaintiffs were tardy in pursuing the rights sought to be vindicated in their complaint.

In essence, Plaintiffs' case is a desegregation lawsuit dealing with institutions of land recordation and law-enforcement relative to Black land ownership, holdings and inheritance. Plaintiffs have specifically plead distinctions in the ability of Black and White Texans to own, hold and inherit land based on race. To the extent Plaintiffs prove that Panola County, Texas maintained *de jure*

and *de facto* racial isolation in its deed and the tax record departments and in its judicial and law enforcement branches relative to land ownership, holdings and inheritance, impacting only this Court's Black Plaintiffs and their class, (including racially mixed offspring), Plaintiffs have alleged a *prima facie* civil rights "race case", i.e.:

A. Plaintiffs are within a protected class, Blacks;

B. The activity or condition complained of was directed at Plaintiffs and their class, Blacks;

C. The intent of the activity or condition was to deprive Plaintiffs and their class of their civil rights to own, hold and inherit land in Panola County, Texas;

D. The activity was more than perchance and fortuitous, rather it was directed specifically and especially at Plaintiffs and their class, Blacks;

E. The activities or conditions complained of were intended by Panola County, Texas the mineral companies and whites and/or their predecessors in right, title and interest to divest your Plaintiffs and their class, Blacks, of the acreage and to transfer said acreage and maintain that transfer to whites or corporations such as Texaco and/or their predecessors in right, title or interest;

F. There was never an attempt to disestablish the racially dual and isolated institutions complained of nor were there any attempts to eradicate the vestiges and impact of those racially dual and isolated activities and systems as set forth in Plaintiffs' Complaint and other pleadings on file, including said Summary Judgment Responses.

G. The system of two societies as alleged was intended to be extraordinarily self-executing, self-sealing and

self concealing so that Plaintiffs would never have a chance at contesting the loss of the acreage and, when and if they ever evolved to a state of cognizance about what happened and/or could ever get anyone to recognize and pursue this morbid event of divestment, the artificial periods of limitation would bar them;

H. As set forth in the prior Summary Judgment Responses, Plaintiffs cannot be blamed for any delay in bringing this Civil Action, which allegation is principally supported based upon the psychological data stated in their pleadings, discovery evidence and supporting data;

I. That this case must be viewed in light of the psychological damage done to Plaintiffs by the oppression they experienced and their evolution from the sustained and continuous phases of Texas race history, i.e., slavery, post-slavery, reconstruction, Black codes, Jim Crow, *de jure* and *de facto* segregation *and* the post Martin Luther King, Jr., Era.

J. The customs, codes and traditions of the race conscious institutions relative to land ownership was actively participated in by either all the Defendants and/or their predecessors in right, title and interest. This is clear from the deposition discovery offered in the prior responses and made a part hereof and from the archival documents and other evidence submitted in support thereof.

III.

1. Plaintiffs specifically request equitable remedies in seeking enforcement of their federal civil rights. Application of the "overtones of the periods" during which the Acreage was taken to this federal civil rights action is consistent with what Plaintiffs feel is the Court's obligation to apply strong equity principles in finally allowing the

same fair play and substantial justice afforded white Texas landholders, i.e., hearing Plaintiffs complaint and formulating remedial details.

2. Plaintiffs have specifically alleged intentional, constitutional deprivations of Federal and State civil rights to own, hold, and/or inherit land in the ex-Confederate, ex-slave State, Texas. Plaintiffs specifically alleged that "but for": (a) a self-sealing, self-executing, self-concealing, racially dual system of citizenship intentionally established and maintained by Panola County, Texas, through law and/or custom, to deprive blacks of their land; (b) Ku Klux Klan and/or white hate group terrorism and purpose intentionally directed against Plaintiffs, their ancestors, and their class based on race and/or association; (c) fraudulent recordations affecting land and absolute absence of notice and opportunity to defend against same, which fraudulent recordations and lack of notice and opportunity to defend were specifically directed toward Blacks to deprive them of the right to own hold or inherit land, (Plaintiffs specifically alleged that Panola County's racially dual recordation, notice and/or law enforcement systems directly, procedurally, and substantively enhanced and/or encouraged fraud by the mineral companies and free whites said against Plaintiffs, their ancestors, and their race.); and (d) active concealment by Defendants and/or their predecessors in-title, interest or office of material, critical facts necessary to bring or timely discover this particular civil action, Plaintiffs would not have suffered the constitutional deprivations of rights essential to owning, holding and inheriting the "valuable and unique" subject matter of this civil action, i.e., The Archibald Cornett Survey (Plaintiffs contend that intentionally dual, race conscious, legal and customary systems

of recordation, notice practice, and law enforcement employed by Panola County, Texas in an institutional sense have been employed to intentionally deprive and/or aid and abet private citizens [including Texaco's predecessors in right, title or interest] in unconstitutionally depriving Plaintiffs of their rights to own, hold and inherit land. Plaintiffs specifically alleged that "but for" those racially based recordation, notice and law enforcement systems, Plaintiffs would have owned, held, and been able to pass on or inherit and affirmatively deal with the land sought to be recovered as a remedy herein. Plaintiffs specifically alleged that Panola County, Texas was and is the "moving force" behind the complained of deprivations and the *sine qua non* for private, racially discriminatory actions taken against Plaintiffs by Texaco's predecessors and for the loss of the Acreage. Plaintiffs specifically requested that, in analyzing and ruling on issues in this civil action, this Court apply the strictest scrutiny available and in equity. Plaintiffs feel that the documented historical denials in educational opportunity and psychological damages done to Plaintiffs during the critical periods alleged are manifest considerations in analyzing, not only when Plaintiffs could have discovered this particualr civil action, but in determining when Plaintiffs could reasonably have been expected to have brought same. (all fact questions). Further, the court should consider the advice of prior counsel in this regard when determining whether Black Plaintiffs were diligent in pursuing their rights. Finally, the psychological damage also went to prior counsel's ability to recognize and bring this instant action. *See* Plaintiffs' Texaco Exhibits A, B, C and D attached hereto and made a part hereof for all purposes.

3. Plaintiffs specifically alleged Panola County's legal and customary system of two societies, one white and one Black. Among other evidence, the deposition testimony, books, articles and treatises submitted in support of this response, by incorporation of, clearly prove the "two societies" aspect of Plaintiffs' Amended Complaint, which aspect is a critical point to Plaintiffs' case. Plaintiffs specifically alleged Panola County government institutional, affirmative enhancement, encouragement and perpetuation of the foregoing private action through its legal and customary dual, racial systems of recordation, judicial involvement, and law enforcement. Plaintiffs specifically alleged an extraordinary condition of servitude impacting their ability to own, hold and inherit the Acreage. Plaintiffs specifically alleged that a combination of the foregoing formed a system that was calculated to hide and did hide the critical facts necessary to bring the instant civil action. Plaintiffs specifically alleged that the "legal and practical effect" of this sort of extraordinary, self-sealing, self-executing, and self-concealing, legal and customary condition of servitude was to effectively close the Deed records and courthouse door to Plaintiffs and all potential Plaintiffs in Plaintiffs' class and to over time yield a legal analysis that the situation could not be addressed. Plaintiffs specifically link the complained of systems and conditions to unconstitutional black land loss in Texas, generally. Plaintiffs specifically alleged that it is of little significance whether Defendants had or had not also concealed identity or the fact of injury. Plaintiffs specifically alleged that the wrongs complained of herein were not merely "self-concealing," rather, that that concealment went to critical elements attending the particular causes of action alleged in this civil action. The con-

ditions and activities complained of were so persistent, widespread and systematic and the failure to disestablish that condition and to eradicate its impact had a residual effect that carried over until 1984 when in a companion case the scope and extent of this sort of state-wide practice of civil rights abridgment relative to Blacks' ability to own hold or inherit land was uncovered.

4. Plaintiffs specifically alleged that:

(a) No "curative" proceedings were ever undertaken to clear chain of Title in the Acreage.

(b) No demand was ever made by and/or of the Defendants or their predecessors in title that all muniments of title"—i.e., all the original deeds or other instruments upon which title depended—be produced, interpreted and/or cleared;

(c) None of the interlopers in the recorded chain of title ever investigated and appraised the title of their respective grantor's before completing their purchases.

When a purchaser of land accepts a deed of conveyance from his grantor, he assumes the "risk of loss" by reason of the assertion of outstanding claims against the land that are not "stale" or otherwise "time barred." Plaintiffs allege that under the alleged conditions and circumstances, their claims are not time barred.

ARGUMENT AND AUTHORITIES

Background

5. Plaintiffs bring this civil action pursuant to the Thirteenth and Fourteenth Amendments to the United States

Constitution and the Federal Civil Rights Acts of 1861, 1866, 1870 and 1871 (42 U.S.C. 1981, 1982, 1983, 1985, 1986 and 1988). Plaintiffs complain that *"but for" the race conscious laws and/or customs of Panola County, Texas relative to land* in, for example, intentionally refusing or failing to record or recognize the extent of Archibald Cornett's marriage to Sally Williams Cornett and his land holdings (fact questions); refusing or failing to give the Cornetts and other Blacks notice of litigation affecting "record title" to the Acreage (fact questions); intentionally refusing or failing to afford protection against violence brought on by attempts to resist whites who wanted the Acreage and who did not approve of the racial association claiming valuable property (fact questions); refusal to allow blacks in and around the areas of recordation for sustained and prolonged periods critical to early discovery and relative to the various schemes of divestment (fact questions); failing or refusing to disestablish the racially dual system and its effects (fact questions); and refusing or failing to otherwise record or recognize statements, memorials, and/or other muniments of title affecting land ownership and/or inheritances (fact questions), all being executed as policy statements or decisions officially adopted and promulgated by Panola County deed and tax departments, and probate system (fact questions), *Plaintiffs' land would not have been unconstitutionally taken by strangers and/or fictitious persons in the chain of record title* (fact questions).

6. Plaintiffs further claim that the constitutional deprivations of due process and equal protection of the laws and customs are visited pursuant to Defendant Panola County's governmental customs that created and continue to maintain rather than disestablish double standards

based on race (fact questions), even though such customs might not have received formal approval in recent years through the bodies' official decision-making channels because the institutional practices of Panola County, Texas and that of its employees, of denying access to the foregoing record systems (fact questions), thus allowing strangers to steal their land with impunity and the protection of law and/or custom (fact questions), are so permanent and well settled as to constitute a 'custom or usage' with the force of law (fact questions). *See generally, Monell v. New York City Department of Social Services,* 436 U.S. 658, 690-91 (1978); *Bennett v. The City of Slidell,* 728 F.2d 762 (5th Cir. 1984), *on rehearing aff'd in part and rev'd in part,* 735 F.2d 861 (1984); *Webster v. The City of Houston,* 735 F.2d 838 (5th Cir. 1984), *aff'd in part, rev'd in part and remanded,* 739 F.2d 993 (1984); *Languirand v. Hayden,* 717 F.2d 220 (5th Cir. 1983); *Garris v. Rowland,* 678 F.2d 1264 (5th Cir. 1982); *Turpin v. Mailet,* 619 F.2d 196 (5th Cir. 1980).

7. The race and previous condition of servitude of ex-slave Sally Williams Cornett, her marriage to Archibald Cornett (white) and your Plaintiffs race, Black, are at the core of this civil action (fact questions) and are the affirmative link to all unconstitutional actions and inactions intentionally directed at Plaintiffs and their class from an institutional sense as far as Panola County is concerned and relative to private citizens' actions including Texaco and/or their predecessors-in-title (fact questions). Texaco's predecessors knew that they could take the land from the unprotected Plaintiffs based on the conditions and activities alleged and that nothing could or would be done before it was too late under law (fact question).

8. Although the various limitations periods applicable to "actions involving title to land" are questions of state law, the time from which the periods commence is a matter of federal law. *E.g., United Klans of America v. McGovern,* 621 F.2d 152 (5th Cir. 1980); *McWilliams v. Escambia County School Bd.,* 658 F.2d 326 (5th Cir. 1981); *Miller v. Smith,* 431 F.Supp. 821 (N.D. Tex. 1977). Controlling limitation periods for the causes of action under Sections 1981 and 1983 are ordinarily the most appropriate ones provided by state law. *Johnson v. Railway Exp. Agency, Inc.,* 421 U.S. 454 (1975); *Whatley v. Department of Ed.,* 673 F.2d 873 (5th Cir. 1982), *rehearing denied,* 679 F.2d 253; *Gonzalez v. Firestone Tire & Rubber Co.,* 610 F.2d 241 (5th Cir. 1980) *on remand,* 512 F.Supp. 1101 (E.D. Tex. 1981). Except that consideration of state law may be displaced where their application would be inconsistent with the federal policy underlying the cause of action under consideration. *Johnson v. Railway Exp. Agency, Inc.,* 421 U.S. 454 (1975).

9. Further, Plaintiffs' failure to file their claims prior to this civil action was not inexcusable delay, especially where any prejudice to Defendants by Plaintiffs' delay in bringing judicial action cannot be attributed to Plaintiffs but rather to the Defendants and/or their predecessors-in-title, interest, and/or office. *E.g., Howard v. Roadway Exp., Inc.,* 726 F.2d 1529 (11th Cir. 1984).

10. The main goal of Section 1983 was to override the corrupting influence of the Ku Klux Klan, and others who hated blacks (especially landholding blacks), and their sympathizers *on the government and land enforcement* agencies of the southern states and one strong motive behind its enactment was great Congressional

concern that the *state courts had been deficient in protecting federal rights. Allen v. McCurry,* 449 U.S. 90, 101 S. Ct. 411 (1980). *Burnett v. Grahan,* 104 S. Ct. 2924 (1984) (goals of reconstruction era civil rights statutes are compensation of persons whose civil rights have been violated and prevention of abuse of state power). Although "adequate in theory", the State remedy for Blacks relative to issues of land ownership, holdings and inheritance, was not available in practice. To this extent, Congress wanted to provide a remedy in Federal Courts supplementary to any remedy any State might pretend to have. *See e.g., McNeese v. Board of Ed. for Community Unit School Dist. 187, Cahokia, Ill.,* 373 U.S. 668 (1963) (purposes of § 1983 were to override the results of the insidious laws, state acts, customs, traditions, codes and institutions peculiar to or having a peculiarly disparate impact on Plaintiffs and their class due to their race or previous condition of servitude). *Accord, Moreno v. Henckel,* 431 F.2d 1299 (5th Cir. 1970). In enacting section 1983 (the Civil Rights of 1871), Congress had been especially concerned with murder, whippings, lynchings and "banishings," and that statutory remedy was meant to restore peace and "justice". *Jones v. Preuit & Mauldin,* 763 F.2d 1250 (11th Cir. 1985), *rehearing denied,* 772 F.2d 918 (11th Cir. 1985) (Sections 1983 was intended to grant broad civil right of redress to any person victimized by an abuse of state power which deprived him of federally secured rights). (Emphasized supplied.) *Accord, e.g., Golden v. Biscayne Bay Yacht Club,* 530 F.2d 16 (5th Cir. 1976), *cert. denied,* 429 U.S. 872 (1976) (section 1983 "preserves and enforces" as against state action, rights, privileges and immunities secured by the Constitution and laws).

11. Section 1981 applies to all types of racial discrimination, public or private. *Taylor v. Jones,* 653 F.2d 1193 (8th Cir. 1981). A claim that county official acting under color of law and the County government as an institution refused to perform acts (*e.g.,* failure or refusal to record full extent of land ownership in the tax department, even discretionary ones; combined with Defendant's fraudulent statements of derivation of title which fraudulent statement was protected by the "System of Divestment", and solely on the basis of Plaintiffs' race, states a cause of action under 42 U.S.C. § 1981. *Jafree v. Barber,* 689 F.2d 640 (7th Cir. 1982). (a) In order to demonstrate a violation of § 1981, it is only necessary that the Plaintiffs show that they were unlawfully denied, by the Defendants, one of the rights protected by that section. *Vietnamese Fishermen's Ass'n v. Knights of Ku Klux Klan,* 518 F.Supp. 993 (S.D. Tex. 1981). (b) *Gordon v. City of Cartersville,* 522 F.Supp. 753 (N.D. Ga. 1981) (where racial discrimination motivated by anti-black feeling is directed against whites, said whites may recover under § 1981). (c) *Vaughn v. Pool Offshore Co., a Div. of Pool Co. of Texas,* 683 F.2d 922 (5th Cir. 1982) (must not only prove disparate and differential impact on persons but also prove governmental act or, in adopting or employing challenged practices or undertaking the challenged action, intended to treat similarly situated persons differently on basis of race); *Castaneda v. Pickard,* 648 F.2d 989 (5th Cir. 1981); *Vasquez v. McAllen Bag & Supply Co.,* 660 F.2d 686 (5th Cir. 1981) *cert. denied,* 458 U.S. 1122 (1981) (under § 1981 necessary to prove discriminatory intent).

12. Section 1982 was designed to prohibit all racial discrimination, whether or not under color of law, with

respect to a citizen's right to own, hold, purchase, lease, inherit, sell and convey real and personal property. *See generally Jones v. Alfred H. Hayer Co.,* 392 U.S. 409 (1968). Section 1982 (Civil Rights Act of 1866) was specifically intended to eradicate all discrimination against blacks and to secure for them full freedom and equality in the foregoing basic civil rights relative to land and property and the 14th Amendment was intended to embody the principles of the 1866 Act (Section 1982). *See e.g., Mahone v. Waddle,* 564 F.2d 1018 (3d. Cir. 1977), *cert. denied,* 438 U.S. 904 (1978). *Accord, U.S. v. Harris,* 106 U.S. 629 (1882) (the importance of § 1982 for black plaintiffs in civil rights cases is that it is based upon U.S.C.A. Constitution, 13th Amendment abolishing slavery and does not, like the 14th Amendment require State action); *Riley v. Adirondack Southern Schools for Girls,* 368 F.Supp. 392 (M.D. Fla. 1973), *rev'd on other grounds,* 541 F.2d 1124 (5th Cir. 1974).

UNITED STATES v. HOHRI

13. As previously opined, the case more closely resembling the instant case is *United States v. Hohri,* ____ U.S.____, 107 S. Ct. 2246, 96 L.Ed.2d 51 (decided June 1, 1987). Plaintiffs note that the Court sidestepped the Statute of Limitations and laches issues based on procedural grounds. There the Court reversed the Court of Appeals for the District of Columbia Circuit holding that it had jurisdiction to decide both nontax Little Tucker Act claims and Federal Tort Claims Act claims (the two bases for bringing suit some forty plus years after the complained of acts occurred) and remanded the case to the Federal Circuit Court which the Supreme Court deemed the appropriate Court rather than the

regional Court of Appeals for the District of Columbia Circuit. Plaintiffs' approach and theory herein is validated by the Court's willingness to hear the case relative to the Statute of Limitations and laches issues. More insight is given to the Court's willingness to resolve the issues created by *Hohri* by Justice Blackmun's statements in his concurring opinion:

> I join the Court's opinion and its judgment. . . . There are three reasons for my concern. The first is the consequent element of further delay in the decision on the merits in a case that has roots already more than four decades old. The issue on the merits probably will be back in this Court once again months or years hence. . . .

United States v. Hohri, ___U.S.___, 107 S. Ct. 2246, 96 L.Ed.2d 51 (1987) (concurrence of Justice Blackmun).

CROSS v. LUCIOUS IS DISTINGUISHABLE

14. Defendants' *Cross v. Lucius,* 713 F.2d 153 (5th Cir. 1983), can be distinguished. In that case, Plaintiffs did not allege an affirmative link between alleged tortfeasors and their successors in interest and Plaintiffs' inability to pursue their claim or Plaintiffs' ignorance of their cause of action nor did Plaintiffs clearly set forth any legal barrier to timely bringing their action. *Id.* at 157. Plaintiffs have specifically alleged an affirmative link between all Defendants and/or their predecessors in title, interest or office and: (1) Plaintiffs inability to pursue their instant claim (2) Plaintiffs ignorance of their cause of action and (3) institutional barriers to timely bringing Plaintiffs' action which barriers were state im-

posed legal or customary barriers to adequate remedies. Plaintiffs' have specifically alleged that said barriers were intended under the unconstitutional system. Further, Plaintiffs in *Cross v. Lucious* did not allege that their mental incapacity was the result of any defendant's wrongful conduct. *Id.* at 157-58. In essence, Plaintiffs failed to allege facts, if true, which would toll the period of limtation. Here, Plaintiffs specifically alleged that unconstitutional county custom and/or local law prevented any attorneys ever retained from taking cognizance of or acting upon Plaintiffs' claims as set forth in their First Amended Complaint. Plaintiffs herein specifically allege that the Defendants, and/or their ancestors and/or predecessors in title, interest or office intentionaly prevented the Plaintiffs from pursuing their claim and/or kept them in ignorance of their cause of action through the maintenance and participation in a self-executing, self-sealing and self-concealing racially, dual system of citizenship directed at Blacks and related to land, Blacks' ownership, holdings and inheritance of land. No where in Plaintiffs Amended Complaint is there any concession that the complained of system had improved prior to October 2, 1984. In this regard and after preliminary inquiry, Plaintiffs initially named, *inter alia,* any and all other unknown and unnamed claimants of the Acreage. Plaintiffs subsequently identified the government and Texaco and its predecessors in title as an institution, Dow Chemical and R. N. Compton as nameable parties.

15. Further, Plaintiffs First Amended Complaint presents a real, substantial controversy between parties having adverse legal interests, a dispute definite and concrete, not hypothetical or abstract. The Fifth Circuit in *Cross v. Lucius,* concluded that a problem existed with the ap-

proach that "the sins of the fathers would not be visited upon the children". *Cross v. Lucius,* 713 F.2d at 155. Plaintiffs would urge the Court under the facts and circumstances plead herein not to allow the "sins of those fathers' Defendents' predecessors in title, interest or office to be visited upon the victim Plaintiffs whose only problem is their race". The Court in *Cross v .Lucius* only had the Plaintiffs' "inartfully drawn pleading" to review. In this case, however, Plaintiffs have offered more than pleadings for review and in support of their claims. *Id.*

16. *Cross v. Lucius* did not involve "arising under" claims *per se,* rather, it only addressed 42 U.S.C. § 1983. This case, beyond Sections 1981, 1982, 1983, 1985, substantially involves pure violations of the 13th and 14th Amendments to the Constitution of the United States and Plaintiffs specifically request that this Court employ "strong and courageous equity" principles in what Plaintiffs believe is a real and continuing injury to their constitutional rights to own, hold and inherit land. Finally, and in response to the fact that Plaintiffs sue the current record holders merely due to their status, *Cross v. Lucius* clearly shows that, if Defendants, their predecessors in interest, title and office were actively involved in the complained of acts, record owners of land (including their current assignees or grantees) are proper parties to a suit seeking as a remedy return of the Acreage currently owned on the record by said parties. *Id.* at 156.

17. As to the historically oppressed minority, Black land-owners, the Court sends the wrong signal to a powerful majority that as long as the latter controls discovery of the evidence, the courthouse and the social climate, anything can be done to the minority with nothing of con-

sequence to correct the wrong. To say "too bad" to such a vast historically oppressed class with no equitable adjustment perpetuates the "two societies" alleged, as to land ownership, holdings or inheritance.

WHEREFORE, PREMISES CONSIDERED, Defendants' Motions for Summary Judgment should be denied in all respects and Plaintiffs should be allowed to proceed on the merits as contemplated by the quite similar *United States v. Hohri*, ____U.S.____, 107 S. Ct. 2246, 96 L.Ed. 2d 51 (1987).

Respectfully submitted,

Attorneys for Plaintiffs
HILL HICKS COLLINS
Attorneys and Counselors at Law

By /s/ DONALD W. HICKS, SR.
One Main Place—Suite 1530
1201 Main Street
Dallas, Texas 75250
(214) 744-0255

CERTIFICATE OF SERVICE (Omitted)

EXHIBIT A

COOK COUNTY DEPARTMENT OF PUBLIC AID
Public Assistance Division
Kenwood District Office
417 East 47th Street
Chicago 53, Illinois
Telephone: Wagner 4-0100

Raymond M. Hilliard
Director

May 11, 1964

Mr. Murphy Pipkin
4856 South Prairie Avenue
Chicago 15, Illinois RE: DA 206-31066

Dear Mr. Pipkin:

Reference is made to Real Property, which was owned by Mr. Archibald Cornett, located in Texas. We requested the State Department of Public Welfare, Carthage, Texas to investigate the Tax Rolls and Abstract Books of Panola County, Texas to ascertain if Mr. A. Cornett owned any property at this death; if so, is there any evidence of public record which might reveal any interest you may have as an heir of Mr. Cornett. The reply to our letter indicates that you do not have any interest in this Real Property.

We are enclosing a copy of the letter from the Carthage, Texas, Department of Welfare. If you have any further questions please feel free to call.

Very truly yours,

/s/ NORA KNUTZEN
(Miss) Nora Knutzen, Supervisor

Reply Attn:
A. Davidson
Resources Consultant:ms
Enclosure

May 4, 1964

P. O. Box 326
Carthage, Texas

Re: PIPKIN, Murphy
4856 S. Prairie Ave.
Chicago, Illinois
DA 206-31066

Miss Nora Knutzen, Supervisor
Cook County Department of Public Aid
417 East 47th Street
Chicago 53, Illinois

Dear Miss Knutzen:

Every effort has been made to determine the status of the property which you have made inquiry about that is located in Panola County, Texas. In making the search of Panola County records, we were able to find certain documents which have led us to reach the conclusion that evidently your recipient does not own an interest in the former estate of Archibald Cornett. We base our opinion on the following reasons.

A search of the Panola County Tax Rolls failed to show where a Murphy Pipkin or Archibald Cornett owned any property in Panola County which is taxed as of the present date.

In searching the County Survey and Abstract Book, we found where there was and still is an Archibald Cornett Survey under Abstract 154 consisting of 160 acres. The Abstract book shows the current owners of all the property in this survey as being Claud Foshee, 80 acres and Milo T. Palmer, 80 acres. The ownership of acres making up the Archibald Cornett Survey is entirely owned by these two individuals.

A search was made of the Panola County Deed Records dating back to 1887, and in Vol. 9, Page 603 we found

a Warranty Deed that had been executed by Aster Cornett to M. D. Sikes. This deed showed that Aster Cornett was a resident of DeSoto Parish, State of Louisiana. The consideration paid for this deed was $80, cash in hand paid to M. D. Sikes. The description of the land conveyed in this deed reads as follows:

> "All that certain tract of land 160 acres situated in Panola County, Texas on the East side of the Sabine River, about 18 miles Southeast of the town of Carthage of the Headright of Aster Cornett. bounded on the North by J. W. Sikes, on the East by R. Gray and by E. Vaniels."

This deed was dated October 18, 1902 and the attestment to the deed was notarized by L. H. Adams, Notary Public, Panola County, Texas.

Although the name, Aster Cornett, is different from the original owner of this 160 acre tract of land, we are of the opinion that Aster Cornett was a relative of Archibald Cornett or, for some reason, Archibald Cornett. was named Archibald Aster Cornett or that throughout the years he had become known by the name of Aster Cornett. Perhaps your recipient would recall whether or not any of Archibald Cornett's sons went by the name of Aster Cornett. Another point in consideration is that in the description of the land of the deed executed in 1902, there is quite a bit of similarity in this land as was set out in the patent deed originally giving this property to Archibald Cornett. Incidentally, we did locate the patent deed in the Vol. and page which you had indicated.

There is no way of telling how many times this acreage changed hands from 1887 up until the present date unless an Abstract Company could be engaged to run a full Abstract on the property.

I trust that this information will be of some benefit to you in planning with your recipient. If I can be of any additional services to you with regard to this matter, please do not hesitate to call upon me.

Yours truly,

Jack B. Colby
Field Worker

JBC:emb

cc: State Office, Austin, Texas
Mr. B. W. Hairgrove, Supervisor, 07-011

EXHIBIT B

LAW OFFICES
VERN J. THROWER & ASSOC.
Suite 1804 First National Life Bldg.
806 Main St.
Houston, Texas 77002
713-227-4218

February 22, 1972

Mr. Irving Pipkin
2210 Bringhurst
Houston, Texas

RE: Title to Real Estate in
Panola County

Dear Mr. Pipkin:

I write this letter to inform you of the results of our investigation into the oil land in Panola County which you and your family claim to be yours through your grandfather. Unfortunately, I regret to inform you that our investigation indicates that the chances of success are too remote for our firm to handle the matter.

We have spent considerable time in looking into this matter and had hoped to find some law which would help you and your family. We did not stop with our own research, but talked with other attorneys for their ideas. Everyone seems to be of the same opinion that too much time has elapsed for any chance of success.

Since you may wish to consult with other counsel we are prepared to return your file to you with all of the papers you have given us. If you will come by our office, the secretary will give the file to you.

I am terribly sorry that we could not help you. If we had, it would have been worth money to us as well as

you. Perhaps we can help you in the future with some other legal problem. If so, please feel free to contact us.

Yours very truly,

VERN J. THROWER
& ASSOCIATES

/s/ GREG W. THROWER
Greg W. Thrower
for the firm

GWT:ca

EXHIBIT C

WEBB, FLAUM & SVETLIK
Attorneys at Law
2000 Three Post Oak Blvd.
1990 Post Oak Blvd.
Houston, Texas 77056

May 23, 1984

Mrs. Robin Curtis
Mrs. Shirley German
Houston, Texas

Re: Land Claim - Panola County, Texas

Ladies:

At your request I have read an Affidavit of Heirship and a variety of other documents relating to real estate in Panola County, Texas. This land was originally owned by your ancestor, Archibald Cornett. It appears that the conveyances that transferred the property from Archibald Cornett were fraudulent, in that they do not reflect his proper name and are otherwise subject to suspicion. Unfortunately, the original transfers occurred in 1902, eighty-two years ago. The laws of the State of Texas have a concept known as "adverse possession". Pursuant to this legal concept, it is possible for people to gain the ownership of property other than by a proper deed or conveyance. For example, it is possible for someone to fence land and hold it against the interest of the true owner for a period of years and thereby acquire title and ownership to it.

There are a variety of periods during which adverse possession can occur based upon a variety of factors such as whether or not the land is fenced, whether or not the party holding the land is paying taxes on it and a variety of other concerns. The ultimate curative period for holding land adversely is twenty-five years. Once a

chain of title has been established the periods of holding are tacked together or added one ownership period to another. Under these laws it is apparent to me that your claim to property in Panola County, Texas, would not prevail. I have enclosed herewith xerox copies of the statutes relating to adverse possession so that you may have them to look at. Pay particular attention to Article 5419, being the twenty-five statute of limitations. I believe this statute cuts off any possible claim that you may have. I regret to give you this conclusion but it is reached only after a careful consideration of your rights in an effort to reach a favorable result. I am sorry that I am not able to be of further help to you.

Yours very truly,

/s/ J. M. WEBB
John Michael Webb

JMW:km

Enclosure

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CIVIL ACTION NO. TY-84-442

ESTATE OF ARCHIBALD CORNETT, ET AL.,
Plaintiffs,

v.

ESTATE OF M. D. SIKES, ET AL.,
Defendants.

(Filed June 5, 1987)

PLAINTIFFS' RESPONSE TO DEFENDANTS' NEVELYN FOSHEE, WIFE OF CLAUDE (H C) FOSHEE, DECEASED AND ANN LEWIS RIVES, MOTION FOR SUMMARY JUDGMENT AND EXHIBITS IN SUPPORT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs, above-listed and named, submit herewith this their Response to Defendants' Motion for Summary Judgment pursuant to Rule 56c, Federal Rules of Civil Procedure, and would show:

I.

1. Plaintiffs herein named, based on the pleadings, affidavits, and depositions of parties, expert interviews, opinions, reports, and surveys, maps and surveys, and other evidence produced during discovery, allege that

there are genuine issues as to many material facts and that the Plaintiffs, and each of them named herein, are entitled to a trial on the merits of their civil action and that no Defendant is entitled to judgment as a matter of law.

2. Plaintiffs have alleged intentional, constitutional deprivations of Federal civil rights to own, hold, and/or inherit land in the ex-Confederate, slave State, Texas. "But for" (1) a self-sealing, self-executing, self-concealing, racially dual system of citizenship intentionally maintained by Panola County, Texas through law and/or custom; (2) Ku Klux Klan and/or white hate group terrorism and purpose intentionally directed against Plainitffs and their class based on race and/or association; (3) fraudulent recordations affecting land and absolute absence of notice and opportunity to defend against same, which recordations and lack of notice and opportunity to defend were specifically directed toward Black's and were procedurally and substantively enhanced and/or encouraged by, among other things, Panola County's racially dual recordation, notice and/or law enforcement systems; and (4) Defendants' and/or their predecessors in title's active concealment of material, critical facts necessary to bring or timely discover this particular civil action, Plaintiffs would not have suffered those constitutional deprivations. Plaintiffs contend that intentionally dual, race conscious, legal and customary systems of recordation and notice practice employed by Panola County, Texas in an institutional sense have been employed to intentionally deprive and/or aid and abet private citizens in unconstitutionally depriving Plaintiffs of their rights to own, hold and inherit land based solely on Plaintiffs race and previous condition of servitude.

"But for" those racially based recordations and notice systems, Plaintiffs would have owned, held, and been able to pass on or inherit and affirmatively deal with the land sought to be recovered as a remedy herein. Panola County, Texas thus was and is the "moving force" behind the complained of deprivations and the *sine qua non* for private, racially, discriminatory actions taken against Plaintiffs and the loss of the Acreage.

3. There exists genuine factual issues as to whether Plaintiffs, through the exercise of "due diligence", would have discovered, in time to overcome the various statutes of limitations posed as affirmative defenses against them adequate grounds for filing the instant civil action. "Due diligence" lacks a precise definition and refers to a "fact-specific judgment on a case by case basis" and the facts of this case are *sui generis* based solely on the impermissible consideration of Plaintiffs' race and previous and continuing, extraordinary condition of servitude.[1]

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1. While white Texans reluctantly accepted the end of slavery, they generally did not change their view of black people as inferior. Newspapers used the term "nigger," compared freedmen to apes, and published articles emphasizing "white" as a synonym for purity and innocence and "black" as a substitute for wikedness and death. The ex-Confederate majority constantly opposed the extension of social or political rights and equality to Negroes. Confusion existed in the fall of 1865 over General Gordon Granger's Juneteenth proclamation of "equality of personal rights and right of property" for freedmen. Some Texas courts allowed Negroes to testify in cases which involved them or their property, though most whites, because of their racial views, regarded black testimony as unreliable. Other judges accepted Negro testimony only against other freedmen. "It seem like the white people can't git over us being free," recalled Allen Manning, "and they do ". . . everything to hold us down all the time." *Ibid.*, p. 41.

When an all white state constitutional convention met in early 1866 to write a new constitution which would define the new status of black men, one delegate conceded "them nothing but the station of 'hewers of wood and drawers of water.'" Another urged "that

4. The system of two socities, one white and one Black, was extraordinarily self-executing, self-sealing and self-concealing. When combined with individual Defendants'

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the paramount object of the people of Texas," the legislature should be allowed to remove all Negroes in the state. . . . While they accepted the end of slavery and granted property rights to freedmen . . . the delegates allowed black testimony only in court cases involving Negroes . . . The first legislature elected under the new constitution prohibited intermarriage, voting, officeholding, and jury service by freedmen. Local custom followed the same general pattern in 1866 . . . *Ibid.*, p. 42.

With no means of presenting testimony in court or voting on local officials to ensure equal legal protection, Negroes faced a constant threat of violence. . . . [W]hite sheriffs [even] attack[ed] . . . [Negroes killing many]. . . . *Ibid.*, pp. 42-43.

Between 1865 and 1868, 468 freedmen met violent deaths—90 percent at the hands of white men. Negroes killed only about 1 per cent of the 509 whites murdered during the same period. Certainly some of the violence resulted from the frontier nature of Texas society. But the figures indicate strong racial overtones in many of the deaths. White intimidation of black people for social and economic reasons proved quite effective under such circumstances. . . . White[s] doing wrong to Blacks [were] ignored by civil courts for lack of white testimony. . . . Negroes [were] convicted on questionable charges of evidence. . . . [W]hite Democrats protested most bureau and army actions, regardless of their merits, because they reduced white control over freedmen. Racial prejudice made freedmen's trials in civil courts "worse than a farce" in the judgment of the Freedmen's Bureau commander who most planters respected as generally fair in his efforts. . . . Congress began to pass a series of acts which divided the ten former Confederate states that refused to ratify the Fourteenth Amendment into five districts with military commanders. The acts also called for the enfranchisement of black men and the creation of new state constitutions which would accept the Fourteenth Amendment protection of equal civil rights. Final [results] showed that 56,678 whites and 47,581 Negroes had registered. *Ibid.*, pp. 43-45.

Upset by the new course of events, white Democratic newspapers complained that freedmen had become "insolent and swaggering, puffed up with new and indigestible theories of equality, the most intolerable of created beings." Yet Republican papers criticized the continued difficulty of convicting any white men for crimes against Negroes. . . . Military commander[s] of Texas under the Reconstruction Act tried to correct the court situation by removing from the

affirmative fradulent concealments and Panola County's affirmative enhancement, encouragement and perpetuation of same through its dual, racial systems of recordation, and the extraordinary condition of servitude forming the basis of Plaintiffs' complaint, that system was calculated to hide and did hide the critical facts necessary to bring the instant civil action. The "legal and practical effect" of this sort of extraordinary, self-sealing, self-executing, and self-concealing condition of servitude was to effectively close the courthouse door to Plaintiffs and all potential Plaintiffs in Plaintiffs' class. Therefore, it is of little significance whether Defendants had or had not also concealed their identity or the fact of injury. The wrongs complained of herein were not merely "self-concealing," rather, that concealment went to critical elements attending the particular causes of action alleged in this civil action.

5. In view of the foregoing, Plaintiffs are entitled to proceed to trial on the merits of their civil action. In support of this response, Plaintiffs rely on Plaintiffs' Second Amended Complaint the contentions of which are based on facts established by: (1) the deposition testimonies of Robert Cornett, Ollie Hollins, Carrie Armstrong, Ann Lewis Rives, Leamon Perkins, and Juanita Walker; (2) affidavits by Robert Cornett, Leon "Buddy"

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jury lists persons who could not take the loyalty oath and by adding black people . . . [which moves were objected to by James W. Throckmorton, the Democratic governor who also objected to Philip Sheidan's attempts to reconstruct] . . . the operation of the courts and the registration of voters . . . [T]o disarm and intimidate freedmen away from the polls or into the Democratic camp, and in a few cases to kill black and white Republican leaders, white Texans created autonomous chapters of the Ku Klux Klan. . . . [T]he Democratic party generally . . . oppos[ed] emancipation and civil and political rights for black people. *Ibid.*, pp. 45-46.

Barnes, Percy Lee German, and Robin German-Curtis; (3) statements in learned treatises and commercial publications to the extent relied upon by Dr. Webb-Woodard and/or Dr. Seltzer in their reports and affidavits relating to subjects of relevant history and the specifics of this civil action, and/or, to the extent relied upon by the public or persons in their particular occupations or in the area of general and/or Black history and civil rights; (4) a partial abstract of title covering the acreage requested as a remedy to the violations alleged; (5) land survey maps, the originals of which are already on file in this civil action which, among other things, define the "community" as that term is used in this civil action; (6) documents from the General Land Office of the State of Texas; (7) live testimony and written statements and accounts from other Blacks similarly situated or as disclosed in articles concerning the condition of Blacks relative to their ability to own, hold or inherit land in Texas or relative to Texas' reputation as to events of general and specific history and/or customs specifically relative to Blacks, affecting land in Texas; (8) the documents, diaries, notes, letters, and responses produced in response to Plaintiffs' inquiries and investigations of the land forming the basis of this civil action prior to October 2, 1986; and (9) the analysis of the "insidious" recordation laws, customs, codes, and traditions that have affirmatively encouraged, enhanced, aided and abetted private individuals in unconstitutionally divesting Plaintiffs of their land or destroying their civil rights to own, hold or inherit that land as well as in concealing Plaintiffs' causes of action.

6. Moreover, this civil action arises out of the post civil war "marriage" of a white, ex-Confederate male

soldier, Archibald Cornett, to a Black, "ex-slave" female, Sally Williams, sometime after Jue 19, 1865 or "JUNE-TEENTH."[2]

7. No "curative" proceedings were ever undertaken to clear chain of Title in the Acreage. No demand was ever made by and/or of the Defendants or their predecessors in title that all muniments of title"—i.e., all the original deeds or other instruments upon which title depended—be produced. Indeed, none of the interlopers in the recorded chain of title ever investigated and appraised the title of their respective grantor's before completing their purchases. When a purchaser of land accepts a deed of conveyance from his grantor, he assumes the "risk of loss" by reason of the assertion of outstanding claims against the land that are not "stale" or otherwise "time barred."

8. The Texas "recording acts" have always provided that, unless recorded, certain "instruments affecting land titles" shall be void as against subsequent purchasers of the land to be affected. Instruments affecting land titles included marriage certificates, heirship affidavits, and statements otherwise concerning marriage, birth and death.

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2. Freedom arrived officially for black Texans on June 19, 1865. when Federal troops landed at Galveston. Emancipation actually came as Union troops spread out over the state or as individual slaveholders accepted the results of the war and freed their bondsmen. Some East Texas newspaper editors in the summer of 1865 urged slaveholders to maintain control over their slaves and opposed ratification of the Thirteenth Amendment, which abolished slavery, because the editors hoped for gradual emancipation and compulsory labor. Some slaveholders continued to hold their slaves well into the fall of 1865. ALWYN BARR, BLACK TEXANS—*A History of Negroes in Texas,* 1528-1971 (Chapter 3, pp. 39-40) (1982).

IDENTIFICATION OF PARTIES

9. This action was one brought by the sole heirs and descendants of Archibald and Sally Williams Cornett.

There are three principal groups of Defendants:

(1) The Estate of CLAUDE (HC) FOSHEE, Deceased; et ux, Nevelyn Foshee; Ann Lewis Rives (referred to as current owners of the surface estate);

(2) Panola County, Texas (referred to as County Defendant); and

(3) Texaco Oil Company (corporate mineral interest owners) Louis Werner Saw Mill Co., its successors and assigns.

II.

BACKGROUND

10. Plaintiffs bring this civil action pursuant to the First, Thirteenth and Fourteenth Amendments to the United States Constitution and the Federal Civil Rights Act of 1861, 1866, 1870 and 1871 (42 U.S.C. 1981, 1982, 1983, 1985, 1986 and 1988). Plaintiffs complain that "but for" the laws and/or customs of Panola County, Texas in, for example, intentionally refusing or failing to record or recognize interracial marriages, refusing or failing to acknowledge the issue of such marriages on the Panola County birth, death, deed and probate records, and refusing or failing to otherwise record or recognize statements, memorials, and/or other muniments of title affecting land ownership and/or inheritances, all being executed as policy statements or decisions officially adopted and promulgated by Panola County deed records, vital statistics (marriage, births and deaths) depart-

ment(s), and probate system, Plaintiffs' land would not have been unconstitutionally taken by a stranger or fictitious person, "ASTER" CORNETT. Plaintiffs further claim that the constitutional deprivations of due process and equal protection of the laws and customs are visited pursuant to Defendant Panola governmental customs that created and continue to maintain double standards based on race, even though such customs might not have received formal approval in recent years through the bodies' official decision-making channels because the institutional practices of Panola County, Texas and that of its employees, of "certifying no record" of Plaintiffs' existence, thus allowing strangers to steal their land with impunity and the protection of law and/or custom, are so permanent and well settled as to constitute a 'custom or usage' with the force of law. *See generally, Monell v. New York City Department of Social Services,* 436 U.S. 658, 690-91 (1978); *Bennett v. The City of Slidell,* 728 F.2d 762 (5th Cir. 1984), *on rehearing aff'd in part and rev'd in part,* 735 F.2d 861 (1984); *Webster v. The City of Houston,* 735 F.2d 838 (5th Cir. 1984), *aff'd in part, rev'd in part and remanded,* 739 F.2d 993 (1984); *Languirand v. Hayden,* 717 F.2d 220 (5th Cir. 1983); *Garris v. Rowland,* 678 F.2d 1264 (5th Cir. 1982); *Turpin v. Mailet,* 619 F.2d 196 (5th Cir. 1980).

11. The "interracial marriage" between Archibald and Sally Williams Cornett is at the core of this civil action and is the affirmative link to all unconstitutional actions and inactions intentionally directed at Plaintiffs and their class from an institutional sense as far as Panola County is concerned and relative to private citizens' actions. White Texans had extended legal segregation to include a ban on interracial marriage in 1858, but the courts de-

clared the law invalid in 1877. The legislature, however, adopted a new act in 1882 which forbade all interracial sexual relations and the authorities generally enforced that law in only with regard to marriage.[3]

12. Although the various limitations periods applicable to "actions involving title to land" are questions of state law, the time from which the periods commence is a matter of federal law. *E.g., United Klans of America v. McGovern,* 621 F.2d 152 (5th Cir. 1980); *McWilliams v. Escambia County School Bd.,* 658 F.2d 326 (5th Cir. 1981); *Miller v. Smith,* 431 F.Supp. 821 (N.D. Tex. 1977). Controlling limitation periods for the causes of action under Sections 1981 and 1983 are ordinarily the most appropriate ones provided by state law. *Johnson v. Railway Exp. Agency, Inc.,* 421 U.S. 454 (1975); *Whatley v. Department of Ed.,* 673 F.2d 873 (5th Cir. 1982), *rehearing denied,* 679 F.2d 253; *Gonzalez v. Firestone Tire & Rubber Co.,* 610 F.2d 241 (5th Cir. 1980) *on remand,* 512 F.Supp. 1101 (E.D. Tex. 1981). Consideration of state law may be displaced where their application would be inconsistent with the federal policy underlying the cause of action under consideration. *Johnson v. Railway Exp. Agency, Inc.,* 421 U.S. 454 (1975).

Plaintiffs' failure to file their claim before October 2, 1984, was not inexcusable delay, especially where any prejudice to Defendants by Plaintiffs delay in bringing

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3. Barr, A., *BLACK TEXANS—A History of Negroes in Texas* 1528-1971, Pemberton Press (1973), pp. 82-83. The State Convention of Colored Men in 1883 protested this "caste system" that continued to wink at white men who visited negro prostitutes or kept black mistresses. Between 1915 and 1924 several cities also passed acts against any form of interracial sex, though state law already forbade intermarriage. *Ibid.,* p. 141.

judicial action cannot be attributed to Plaintiffs. *E.g.*, *Howard v. Roadway Exp., Inc.*, 726 F.2d 1529 (11th Cir. 1984).

III.

FACTS ESTABLISHED BY DEPOSITIONS IN SUPPORT OF PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

Deposition Testimonies of:

ROBERT CORNETT testified upon his oath:

1. That he was born July 25, 1907 in DeSoto Parish, Louisiana, about 10-12 miles across the woods from Panola County, Texas to Aldonie Gray (his mother) and Mongo Cornett (his father) and that Archibald Cornett was his grandfather (DEP. 5-7);

2. That his father was born in 1870 in Panola County at home on the land that forms the basis of this law suit (DEP. 11-13);

3. That his grandfather was a white man who married Sally Williams Cornett who was an ex-slave and Black (DEP. 13-14);

4. That he never talked much to his grandmother, Sally Cornett, about her background as a slave because she didn't like to talk about it, but he spent a lot of time with his grandfather, Archibald Cornett (DEP. 14);

5. That his house was maybe 100 feet approximately from his grandparent's house in DeSoto Parish,

Louisiana and that Archibald Cornett had houses for all his children around his house, and that he remembered seeing his grandmother being around his grandfather every day until his grandfather died when he was between the age of 8 and 9 years old, at which time his grandmother moved elsewhere and was not around that much any more (DEP. 14-15);

6. That his father (Mongo) and his aunt, Julie, were the only two children of Archibald and Sally Cornett that were born in Panola County (DEP. 15);

7. That Archibald Cornett was a literate man who could read and write, read the newspapers and tended to his own business, but that he had never seen him sign any documents (DEP. 15);

8. That Archibald Cornett was a timber man for Washburn Lumber Company which, according to the old people of DeSoto Parish, whites and negroes, was a partnership between a man named Mr. Washburn and Archibald Cornett and that the mill ran about 12 years before it went out of business which was close around the time he was 8 years old (DEP. 16);

9. That Archibald Cornett confided in him or talked to him about living in Panola County and particularly the 160 acres Plaintiffs are claiming, and told him that he owned 160 acres of land in Panola County on patent (DEP. 19);

10. That he never heard his grandfather say anything about coming back to the land except that his

grandfather stated he was going to cut the timber off the land in Panola County (DEP. 18);

11. That there existed a condition in the State of Texas and in Panola County that didn't allow his grandfather and grandmother to retain their property (the 160 acres of land) and that condition was the fact that Archibald Cornett's wife, Sally Williams Cornett, was black (DEP. 18);

12. That the allegations contained in the complaint are based upon his family's history and that the things alleged in the complaint were told to him over the years and concerned the relationship of Archibald and Sally Williams Cornett had to the land and had to Panola County (DEP. 19);

13. That his grandfather, Archibald Cornett, regularly talked to him about the land in Panola County (DEP. 19);

14. That his grandfather told him that the reason that he left the land was that the white people in Panola County, Texas tried to pick his wife for him, and he thought he had a right to choose his own wife. He thought if a man could not choose his own wife, anything as personal as that is, he was a slave. He chose a black woman for his wife and that was his right. These people objected to that and were being abusive to him, and they were having to fight to defend themselves, and he had to leave Panola County (DEP. 20-21);

15. That some time after the Civil War Sally Williams was told to leave her plantation by her master (DEP. 22-23);

16. That some time after Sally Cornett got the word, Archibald, who was riding a horse given to him when he was in the Confederate Calvary, met up with Sally Williams walking down the road who told him she didn't know where she was going and did not have anywhere to go, she was just going; that Archibald let Sally go with him and they went over to Panola County and vowed to stand with each other as long as they lived (DEP. 22-24);

17. That Archibald Cornett trapped, fished and ran a ferry boat in Panola on the Sabine River and had a house on the subject matter land where two children were born (DEP. 24-25);

18. That the ancestral history has it that Archibald was operating his ferry one day and had the wife and two children with him when some white men came on and started abusing her; there was a fight about Sally's race and so the whites in Panola County had it in for Archibald after the fight and the Cornetts had to leave; that these whites set out to kill Archibald and he had to leave to defend his family, and that Archibald did not have any protection in Panola County like whites without Black wives had protection from other white people; that the Cornett family was picked on because if a white man had a Negro woman or wife, she either had to be a cook or some kind of a servant and he could not claim her as his wife and introduce her as such, rather that she was the cook, washwoman or something else, or just his "gal" out there and something to crack

jokes about. Archibald did not do that; he introduced Sally Williams as his wife and stood on that introduction which got the Cornetts into trouble (DEP. 26-27);

19. Another incident described to deponent by his grandfather, Archibald Cornett, was that leading up to his banishment from Panola County, Archibald had always been picked on; his fences were torn down and his traps were robbed, they were shot at from ambush and generally picked on through the years he was in Panola County until the foregoing incident at the ferry, at which time persons in Panola County honestly set out to kill the Cornett family causing them to flee for their lives (DEP. 27-28);

20. That the foregoing was passed down in his family by his grandmother and grandfather who were never convicted of a crime nor arrested; that the information given to the family would not be recorded in any newspaper or legal document (DEP. 28-29);

21. That Archibald Cornett had no brother, sister, mother or father at the time he met Sally Williams; that he was originally from Missouri where he grew up on farm and worked as a carpenter, brick layer, blacksmith, wood carver and things like that (DEP. 29);

22. That he joined up with the Confederacy in Missouri and ended up at the end of the war somewhere between Shreveport, Mansfield and Carthage where he settled in the Panola County vicinity eventually on the subject matter land;

that he only had comrades in the army settled around him over in DeSoto Parish (DEP. 30);

23. Archibald was not the only one who took a black woman for a wife; more of his comrades did, i.e., Mr. Booten, Mr. McMillian, Mr. Williams and Mr. Barnes and that deponent grew up with their decendents (DEP. 30-31);

24. That Archibald Cornett never talked about an "Aster Cornett" and no one in the family has ever heard of an Aster Cornett; that the municipality, the county government and state government never kept accurate records on dependent's family in Panola County, Texas (DEP. 31-32);

25. The deponent worked in Shelby County, Texas and has been to Panola County only once (the day of his deposition); that he heard about Panola County and knew how far it was from DeSoto Parish and that it is just across the river and close and adjacent to Shelby County (DEP. 32-33);

26. That deponent was born in Logansport, in DeSoto Parish, and raised around Keatchie and Longstreet, Louisiana (DEP. 34);

27. That based on his life of 78 years in America and, in general, in Texas (DEP. 32), that whatever white men did to him in his young days, or any other Negro, nothing could be done about it (DEP. 34);

28. That his experiences (DEP. 35-51) prove that the general rule over the South, especially Panola County, Shelby County, DeSoto Parish, and, Texas

in general, blacks had no protection; no legal protection; that the sheriff or none of the other officers were supposed to protect you, but there was no protection in the courthouse nor in jail and black people were not secure or safe (DEP. 51);

29. That Archibald Cornett never signed a document conveying his land, nor did he ever intentionally abandon the land (DEP. 51-52);

30. That any sale of his grandfather's land was a fictitious sale in that Aster Cornett never existed so the sale had to be fake; and that no one in his family was ever contacted concerning the sale of that land, nor were there ever legal proceedings to determine the heirs of Archibald Cornett (DEP. 51-54);

31. That he specifically remembers that in early 1916 his father (Mongo) came over and tried to inquire about the subject matter land and the County officials would not let him into the records at the courthouse, and Mongo was told to get out, and there was nothing in Panola County, and there was no room for trouble makers in Panola County (DEP. 54-55);

32. That on another occasion, somewhere in the mid 1940s a cousin came over to Panola County and was told by County officials the same thing, i.e., to get out and no trouble makers are allowed (DEP. 55);

33. That their attempts to resolve the issue was never dropped; lawyer after lawyer would quit or fade

out and the Cornetts never would drop trying to resolve the issue of ownership (DEP. 55);

34. That no suit was ever brought to determine that anybody had adversely possessed the land; there was no judicial conveyance of the land to any party; no court ever conveyed land to any party and no sheriff ever had a sheriff sale on the land; the land was never possessed for non-payment of taxes or ever mortgaged, nor were there liens ever arising against that property (DEP. 55-56);

35. That Archibald's marriage to Sally Williams was not recorded or registered because the State of Texas was not recording marriages between whites and blacks, and that any such marriage was common law; that there existed no documentation as to the existence of the marriage between Archibald and Sally, but that two children were born in Panola County to Archibald and Sally (DEP. 61-62);

36. That he was certain there were no other relatives of Archibald Cornett that lived in Panola County and he was only going by Archibald's word; that the family bringing this suit are the only family (DEP. 62);

37. That he didn't know if Archibald moved straight to DeSoto Parish from Panola County, but he does know that Archibald left Panola County, and as a child he was told by Archibald that he "went straight as the crow" (DEP. 63);

38. Archibald had 11 children and dependent's father, Mongo, was born in 1870 over in Panola County,

and that information was obtained from the census and his father's birth records were not in Panola or Shelby County, Texas because they were not recording the issue of the interracial marriages (DEP. 64);

39. That his family records are what was told him by his family and his family history is what his family told him (DEP. 66);

40. That his family had gone over to inquire about taxes and the property and were told that they had none to pay and when they tendered payment of taxes, they couldn't get any knowledge concerning the property and were now allowed into the courthouse to find out anything (DEP. 66);

41. That his grandfather (Archibald) died October, 1915 when deponent was between 8 and 9 years old (DEP. 66-67);

42. That prior to his death Archibald owned a saw mill where he was supplying timber and everything on the land in DeSoto Parish, Louisiana, and was supposed to be in business with Mr. Washburn; that the property owned in DeSoto Parish was not passed down to Archibald because it was also seized where the family did not get the property and did not know what was going on (DEP. 67);

43. That when he purchased his house he had a guaranteed title from a title company so he did not have to check the record all the way back to patents or to events that might affect the title to his house purchased in 1902 (DEP. 68-69);

44. That Aster Cornett was a fictitious person whom he had never heard of and that to this day he has no relatives in Panola of the white or mixed race; that Archibald Cornett did not have relatives in Panola County of the white or mixed race (DEP. 69-70);

45. That Mr. [Wes] Booten was someone who served in the Confederacy during the Civil War with Archibald and Mr. Booten also married a Black ex-slave (DEP. 85);

46. That the Bootens lived up at Keatchie for a long time;

47. That another comrade of Archibald's was Bone McMillian, who also married a slave and lived around Keatchie and Longstreet. Mr. Williams and Mr. Barnes had Black ex-slave wives (DEP. 91-92);

48. That the first civil rights statute or law giving blacks rights were the Thirteenth and Fourteenth Amendments, but the last one that had any teeth in it was in 1964. Blacks have been fighting at civil rights that every since the Thirteenth and Fourteenth Amendments (DEP. 93);

49. That the specific purpose of those statutes according to his knowledge was to guarantee that the negro had the same rights as every body else had, to vote, to work where he was able to work and to be judged as a person instead of by the color of skin and his facial features, hair texture, thickness of lips or whatever . . . to be a man like every body else, a regular citizen like every

body else; that the Thirteenth, Fourteenth and Fifteenth Amendments to the United States Constitution guaranteed those foregoing rights except that they were not abided by the Southerners who say that those things were null and void and did not pay attention to it (DEP. 94);

50. The straw that broke the camel's back according to Archibald was at the ferry, and it was about his wife; so, when it all boils down to it, his wife was the reason he had to leave Panola County (DEP. 97);

51. That he had never heard of Juanita Walker, that he had never talked to a Juanita Walker, nor any one in the Walker family (DEP. 97-98);

52. That his grandfather and grandmother were never adjudged by any court of law as being incapable of handling their affairs or being senile and that neither were, doing their life time, ever referred to in the communities in which they lived as "crazy" (DEP. 98-99);

53. That based on the facts that if you were a Negro, even with one drop of Negro blood, blond hair and blue eyes, if they classify you as a Negro, you have no rights. You were stigmatized and you have no rights. You could not get justice. You had no more justice that what they wanted to give you. Like the *Dred Scott Decision*—the Negro had no rights, the white man was bound to respect. That is deponent's contention (DEP. 101-102);

B. OLLIE V. HOLLINS testified upon her oath:

1. That she was born December 18, 1904, making her almost 83 years old and that her mother, Rosie Cornett, was Archibald Cornett's daughter; that she remembers her grandfather, Archibald Cornett and, in fact, talked to him in his life time as well as her grandmother, Sallie Williams Cornett (DEP. 6-7);

2. That she filed this suit to get her grandfather's land back which has been taken away from her family illegally and that she wants the land and everything it contains, the timber, the mineral rights, the oil and everything (DEP. 7-8);

3. That she lived occasionally with Archibald Cornett in Keatchie, Louisiana and DeSoto Parish where she was born which was several miles away from Archibald Cornett's home in the same community; that she spent quite a bit of time with Archibald and Sally Cornett who were both together (DEP. 8-9);

4. That Archibald had related to her the circumstances under which she lost the land in issue in this civil action (DEP. 9);

5. That her grandfather had to leave Panola County because he had a black wife and they said he could not live in that town with a black woman; and that "they" didn't have any names attached, just the white people of Panola County; that they attacked him one night and he had to shoot it out with them and take his family and get away and left during the night (DEP. 10);

6. Under her knowledge and understanding Archibald never signed a deed conveying the land to anyone nor did Sally (DEP. 11);

7. That Sally Williams met Archibald Cornett according to the family history when she was walking down the road and didn't have any place to go because her master had turned her lose and she had no where to go and didn't know where she was going; that Archibald was on a horse coming down the same road and asked her where she was going. She told him she did not know and he said, "Come on and go with me." He took her and they got married (DEP. 11);

8. That her grandmother and grandfather could not marry in those days but they did live together until their death; that Archibald had no other family, including brothers and sisters in Texas or Louisiana or any other state as far as she knew; that he originated from Missouri and came to Texas in the service, i.e., Civil War (DEP. 12);

9. That Archibald was never adjudged by a court of law as being incapable of handling his affairs; not adjudged by a court to be incapable of functioning on his own; that he was a literate man who could read and write and he did not have a reputation in the Keatchie community as being crazy (DEP. 13-14);

10. That each time Archibald told her of the events concerning why he left Panola County he was consistent in saying the same thing each time; he never varied in what he was saying nor did he ever add facts (DEP. 14-15);

11. That Archibald related the circumstances under which he left Panola County when he would be talking to his family; that "Mama Sally" consistently said the same thing about why she and her husband had to leave Panola County (DEP. 15-16);

12. That "Mama Sally" was never adjudged or determined by a court to be senile and she was able to handle her affairs; that she had a reputation in the community as being a person who could handle her affairs (DEP. 16);

13. That she had never heard of Aster Cornett until the family started researching records (DEP. 16-17);

14. That Jenny German, Archibald's daughter, had a lawyer to check when they had an organized group that no longer exists because they are all dead (DEP. 17);

15. That she first met Juanita Walker when the family was looking for the land and before Ms. Walker gave her deposition in the case; that she met Ms. Walker in her store after the family walked in the store; that the lady delivering the mail told the family to go down to Ms. Walker's store and maybe that lead would help them; that they followed her instructions; that when they got to the store they asked Ms. Walker if she knew where their land was; that Ms. Walker responded to the question by saying that she did know where the land was (DEP. 16-20);

16. That the family asked Ms. Walker if she knew their grandfather; that she said she did not but

that her grandfather and father knew him; that after they talked to Ms. Walker the family was able to locate the land because she directed them to the land (DEP. 19-21);

17. That she had not seen Ms. Walker after locating the land until the night before this deposition; that she did not talk to Ms. Walker about the lawsuit; that she did not read Ms. Walker's deposition but that her attorney had told her some things Ms. Walker had said in her deposition (DEP. 21-22);

18. That portions of the property had a fence and that she did not know how it had been used; that the family was kind of afraid to come back on account of the way "it happened" (DEP. 25);

19. That her grandfather was afraid to come back because "they" told him he had better not come back (DEP. 25-26);

20. That the family organized and contributed money to retain an attorney to investigate the property and what happened to it (DEP. 27);

21. That there are no heirs of Archibald Cornett that lived in Panola County; that the first two children of Archibald Cornett lived with Archibald and Sally when they were living in Panola County (DEP. 29-30);

22. That Archibald and Sally Cornett never went back to Panola County; that Archibald was a farmer and pulled neighbors teeth and made liniment for arthritis, as well as engaging in logging; that he had property in DeSoto Parish as well which property Plaintiffs are claiming (DEP. 31-32).

C. CAREY ARMSTRONG testified upon her oath and stated:

1. That she was born November 1, 1914, making her 71 years of age. She was born in Keatchie, Louisiana, DeSoto Parish; that her mother's name was Jenny German who was Archibald Cornett's daughter by Sally Williams; that she did not know Archibald but she knew Sally Williams Cornett due to her age; that she knew Sally because she lived with her mother and Archibald was not living at the time Sally lived with her mother, who was next to the youngest (10th child); that Archibald had eleven (11) children (DEP. 6-8);

2. That she got a chance to talk to Sally Williams Cornett about her grandmother's past; that Sally mentioned that she was a slave and that she came to know Archibald by meeting him on a road; that her old master told her, "Girl, you can go." She was standing in the middle of the road and Mr. Cornett came by and picked her up and they lived together until death; that her master did not give her any provisions and treated her cruel and did not give her any money or directions on where she should go, nor did receive 40 acres and a mule (DEP. 9-12);

3. That Archibald came along and picked her grandmother up and took her with him for his wife; that Sally was fourteen (14) years old when this occurred; that deponent was eight (8) years old when she recalls being talked to about the circumstances of Sally meeting Archibald (DEP. 13-14);

4. That everything deponent knows about Archibald she learned from her grandmother, Sally, and her mother who was Archibald's daughter (DEP. 13-14);

5. That she has read the allegations contained in her complaint about the condition of black people in America and in Texas and Louisiana and that she had personal experience with those types of things that were alleged in said complaint (DEP. 14);

6. That she in her 70 years had been treated as described in the complaint (DEP. 14-15);

7. That Archibald accepted deponent's mother's brothers and sisters as children and as far as she knew Archibald had no other woman that he lived with and no other family in Texas (DEP. 15-16);

8. That her grandmother, on a continuing basis, talked about how it was that she and Archibald came to leave Panola County, Texas; that she would just start talking about it without ever being asked and that the stories never changed (DEP. 16);

9. That Sally was never adjudged non compos mentis or unsound, or unable to take care of her affairs or senile in her lifetime and that Sally did not have a reputation in the community for being senile or crazy; that Sally did not have a reputation in the community as far as deponent knew of lying or being dishonest; that her grandmother, Sally, would have no reason to lie about her experiences in Panola County (DEP. 17);

10. That Archibald and Sally did not leave Panola County on their own; that Archibald and Sally did not sell the land, give anyone a power of attorney to sell the land (DEP. 18);

11. That she never heard of Aster Cornett; that her mother filed a document in her lifetime of record with Panola County at the Deed Records office which document listed her mother as an heir and a power of attorney over the property to try to get the land back; that the power of attorney is of record in Panola County (DEP. 19-21);

12. That she was told by her mother that the reason her mother wanted the land was that it was her father's land and she told deponent on her last year around, "Don't give up because it's my daddy's and you all fight for it." (DEP. 21);

13. That Sally Williams Cornett ran away from Panola County by night with her two children and Tychie; that Mama Sally called Archibald "Tychie" (DEP. 22-23);

14. That her mother attempted to pay taxes on this land in Panola County; that she sent someone to pay the taxes, Henry Payton; that deponent knows this for a fact because she was at her mother's house when Henry Payton came and was sent by her mother to Carthage; that Henry Payton reported back and because deponent was giving her mother money to help support the investigation into the land, deponent's mother reported to her (DEP. 24-25);

15. That the story of why Mama Sally and Archibald left Panola County was handed down by Mama Sally and deponent's mother to her (DEP. 26);

16. That Archibald and Sally left Panola County because of the white people and because Tychie was married to a black woman and they had to leave by night in a rush with two children (DEP. 27);

17. That Sally never told the family to go back and get the land back in Panola because she was afraid and told them, "Don't fool with that; the white people will kill you over there." (DEP. 27-28);

18. That grandma Sally was afraid to go back but Archibald was not afraid, according to deponent's mother (DEP. 30);

19. That Archibald never executed any power of attorney to sell the land in Panola County; that she had never heard of Aster Cornett;

20. That Archibald's daughter, Jenny Cornett, organized a group and tried to investigate the land; and at that time hired a lawyer to prepare an affidavit of heirship to file in court, but that deponent does not remember the year that was done; that no lawsuit was ever filed until 1984 (DEP. 35);

21. That no white man lived with a black man in Panola County without being run off (DEP. 35-36);

D. LEAMON PERKINS testified upon his oath and stated:

1. That he was born in June 29, 1912, in Panola County, Texas about 25 miles east of Carthage; that he grew up in Panola County and went to school in Panola County (DEP. 5-6);

2. That he came from a family of fifteen (15) and left Panola County in 1947 when he was about 34 or 35 years old, married and had five (5) children (DEP. 9);

3. That he was in the log cutting business at the time he left Panola County for Frost Johnson Lumber Company, located about 20 miles east of Carthage and the logging operation took place primarily from Deadwood and Logansport and the other different little towns close to Carthage (DEP. 10);

4. That he was familiar with "the Flatwoods" which was south of Carthage; that he still had relatives in Panola County that he remains in contact with (DEP. 10-12);

5. That when he was growing up in Panola County there were substantial differences between the way whites were treated versus blacks; that whites had a reputation when he was in Panola County of tolerating blacks in Panola County (DEP. 12-13);

6. That he had been to jail before in Panola County on a theft case around 1937, but that he was not convicted; that he had a trial, at which time he was determined to be innocent; except that prior to trial the sheriff from Carthage got him out of the jail and took him over to Center, Texas,

(close to Panola County) where they beat him and forced him to make a statement saying that he stole a cow (DEP. 13-17);

7. That he had admitted to stealing said cow to save his life because they beat him with a blackjack across his back, his head and everywhere until he said he stole the cow; that at the hearing he told the court what happened to him and that's when he was found "not guilty" (DEP. 17-18);

8. That he had been to the Flatwoods when a white guy he worked with, Fred Adams, took him there around 1936 and put him off in the Flatwoods so they could kill him and that would be the end of him (DEP. 19-20);

9. That he was taking care of some cattle ranged for Fred Adams; that he knew it was the Flatwoods because Fred Adams told him of the Flatwoods and he had always known what direction the Flatwoods was in, which was south of where he lived which was over what they called "Homley" school in Panola County, Texas (DEP. 20-21);

10. That he had walked a good many blocks when Fred Adams finally came back to pick him up; but that before Fred Adams picked him up he could hear people hollering at him and each time one hollered he could see another coming out the side of the road or the street; and that he was always told by the people in that area that when you hear them hollering, you'd better be going to hide or something because all are coming; that "they" meant those people from the Flatwoods which did not consist of any blacks

who could not even go to the Flatwoods so how could they live there in the Flatwoods (DEP. 21-22);

11. That he had formed an opinion as to the reputation of the Flatwoods at the time he was there in 1936, which was that the Flatwoods was a dangerous place and you could not go there and if you did you would get killed—you couldn't get back; that it was dangerous in the Flatwoods because they did not allow colored people there and it was dangerous for colored; that it was not dangerous for whites; that his mother and father told him these things (DEP. 23);

12. That his opinion of the Flatwoods was formed based on what his mother and father, along with other people, had told him; that as far as he knows no blacks are living in that area today (DEP. 24);

13. That based on his 73 years as a black man who lived in Panola County until he was 36 years old, among other things, the Flatwoods had a reputation against blacks that blacks could not go there, and if they went there, they wouldn't get back away from there; that as far as he knows that is still the reputation of the Flatwoods (DEP. 26-27);

14. That the reputation of Carthage when he lived there was a pretty bad reputation towards colored people in that colored people had no protection; colored people had no protection by the law and did not have anyone else to call on (DEP. 29-30);

15. That there were no blacks in any governmental positions—city, state, or otherwise, and that no blacks were on the sheriff's police departments (DEP. 31);

16. That the whole story in extent of why he was tried for theft of said cow was that a white guy by the name of Fred Adams owned some land in Panola County and there were some particular white people who wanted to buy the land; that Fred Adams was out of the penitentiary on parole and they wanted deponent to swear that he owned the cow and that Fred Adams killed it so that they could revoke his parole and put him back in the penitentiary so they could sell his property (DEP. 51-52);

17. That one of the reasons he moved to Houston when he did was that he was getting superstitious and afraid to live over there in the country where he was living, but that he also left to help his living conditions, too; that he had received a lot of threats against his physical safety from the Ku Klux Klan because they sent him letters and burnt a signal light; that he was always told that whenever they burnt a signal light you had better not be there the next night because they were coming after you; that the signal light had all kinds of colors, red, blue and green, and, in fact was a beautiful light; that the burning of the light was to signify to him to leave the place where he was living and that they wanted him off the place; that they did not want him living where he was living (DEP. 52-54);

18. That, in fact, the Ku Klux Klan did come back the following night; that this must have been something like in 1935; that they were all dressed in brown uniforms, had on them sharp caps and had feathers in their hats; that he knew it was the Ku Klux Klan because that's what he had always been told the way the Klan dressed by the people who lived in the County who knew about the Klan and had seen them; that these were the people that told him of the Klan; that he did not recognize any people who showed up the next night because you could not recognize them; that it was somewhere around 10-11 o'clock at night and they came in cars and it was as many as 10 to 14 cars; that they all came in a line like a funeral; that they drove up and one got out and another got out, and another, until the whole line of cars was empty; that he was hiding in the fruit orchard in a hole and could see them from that hole; that they drove up to the front of the house where there was a fence around the house about 150 feet from the house and the hole must have been about 600 to 700 feet from the house; that he was somewhere around 23 years old at the time; that the people in the cars lifted the gate, which was closed, and shook it and they all finally got around and talked for about an hour then they all started getting back into their cars just like they came up; that they were all white people; that he could tell that they were white because they had a light burning in the night which made you see them just like it was day; that they had something stuck in the ground and had lit a big flare light as if you had an

electric light; that he could not recall faces but he knew they were white and he did not know any one of them (DEP. 54-57);

19. That he stayed in the hole for another hour until they left, after which time he got up and left and went to his mother's house, then came back to his house the next day; that he stayed on that place a few more months and kept hearing them make threats and getting letters and notes at his mailbox, so he decided to leave and come to Houston, after which time he stayed a couple of weeks and went back, but he did not go back to the same place; that he then later left in 1947 for Houston and left Panola to stay away (DEP. 58);

20. That the letters he received told him all that could happen to him and what might happen to him if he stayed in Panola County; that he did not report the incident to the sheriff because it didn't seem to do no good after he had problems with the sheriff himself; that he was having these problems with the Ku Klux Klan before the sheriff took him to Center, Texas; that the reason he did not report the Ku Klux Klan incident to the sheriff because he didn't feel like he would get help from the sheriff because he had never seen any colored person get help (DEP. 59-60).

E. ANN LEWIS RIVES testified on her oath and stated:

1. That she was born November 7, 1929 in Minden, Louisiana and she currently resides in Lake Charles, Louisiana (DEP. 5);

2. That her father, John Alma Lewis, married her mother, Fern Palmer (DEP. 6);

3. That her maternal grandfather was Milo Pickney Palmer and grandmother was Laura Mae Palmer (DEP. 6);

4. That her grandparents had two children, her mother and her uncle, Milo Palmo (DEP. 38);

5. That her uncle Milo owned the 80 acres of land that she is showed to be record owner of and that he died without a will leaving 3/4 to her mother and 1/4 to her grandmother, and that her grandmother died with a will leaving her 1/4 to deponet (DEP. 37-39);

6. That she never heard of any problems with title with her 80 acres of land but that she did not spend a lot of time in the area where the land is located (the Flatwoods or the Galloway Community); that when Milo T. Palmer purchased the land in 1959 he engaged Crandall Bounds to be a caretaker (DEP. 39; DEP. 41);

7. That she owns more than just the 80 acres on the Archibald Cornett Survey and that Bounds was to take care of all that she owned (DEP. 40); that she did not come in possession of the land to own it until 1972 (DEP. 46);

8. That she did not visit the area often as a child; that she did not spend any significant time at all in the area as a child (DEP. 41);

9. That the first time she visited the land was in 1972 when she came over immediately to walk it and

since 1972 she has walked the land at least three times (DEP. 41-42);

10. That she has never built a house on the land; that she has never built a cabin on the land; that she does not recall having posted signs on the land (DEP. 42-42);

11. That she never used the land on the weekend for hunting or fishing, nor did she ever conduct any duck or deer hunting on the land and has no idea whether ducks or deer are in the area (DEP. 43);

12. That the land she has record title of has not been farmed nor have cattle been grazed that she knows of; that she does not know whether a fence is around the land, but that her forester has told her everything is fine and that if there had been a fence around the land she would have received a bill for that fencing and she can not receiving a bill for same (DEP. 43-44);

13. That she owns no interest in the mineral estate, only in the surface estate (DEP. 45);

14. That she has sold timber from the land and considers it a product and that she has not sold any timber since 1979 (DEP. 45-46); that she has no records that would reflect how much money she received from sale of timber off the land except income tax returns (DEP. 46);

15. That she does not have title insurance nor to her knowledge has any title insurance ever been issued on her property (DEP. 7);

16. That title and the deed to her property came from

Archibald Cornett and that she has voluminus records (DEP. 8);

17. That she understands that Archibald Cornett had sold his land and that she did not know whether he executed any instrument of conveyance on his land but that she would suppose if he did it would be of record (DEP. 9);

18. That if there existed no deed of conveyance from Archibald Cornett that her opinion as to her ownership would not change because she has abstracts and legal deeds and clear titles that have been undisputed until now for 100 years (DEP. 9-10, 23).

F. JUANITA WALKER testified upon her oath and stated:

1. That her full name is Juanita Baker Walker, and that she is a life-long resident of the Galloway Community in Panola County (DEP. 5-7);

2. That her house is situated on the Grubbs Survey which is approximately two miles from the Archibald Cornett Survey by the road called "Yellow Dog" Road (DEP. 5);

3. That she has a grocery (Walker's Grocery Store) at the corner of Yellow Dog Road and Highway 31 and that Yellow Dog Road is County Road 455 (DEP. 8);

4. That she has operated her grocery for 4 years (now over 5 years) and prior to that worked 22 years on Logansport which is 7 miles from the Galloway Community in Panola County, Texas out Highway 31 (DEP. 8-9);

5. That she imagines she can remember things from the time she was 6 or 7 years old and that since that time she heard her daddy and grandfather talk about Archibald Cornett and that the conversations about Archibald Cornett would come up because she had an uncle that lived on this place which they called "Marion Creech" Place (DEP. 13);

6. That the uncle living on that place was Uncle "Zek" and that her father and grandfather would talk about the land being Archibald Cornett land;

7. That her uncle farmed the land and from time to time discussions were had concerning that land and that she would hear it discussed whenever black people would come to the community down there that the same thing would happen to them that happened to Archibald Cornett (DEP. 13-14);

8. That black people do not live in the Galloway Community nor have they, in her life time, lived in the Galloway Community, nor have they within her knowledge, attempted to live in the Galloway Community (DEP. 14);

9. That in 1942, her first year in high school, a Coca Cola truck came through that community with two black drivers and that a driver was taken out of the truck and never seen again. That truck sat in the community almost 3 months before Coca Cola Bottling Company sent after it (DEP. 16);

10. That it was her understanding that Archibald Cornett operated a ferry on the Sabine River and that ferry was burned (DEP. 17);

11. That the Ku Klux Klan was active in the Galloway Community;

12. That she heard from her father and grandfather that Archibald Cornett was run out of the County and that her grandfather was living at the time it happened (DEP. 20-21);

13. That she was told stories that the Ku Klux Klan ran Archibald Cornett out of Panola County (DEP. 21);

14. That within her knowledge all of the older people that lived within the community know all about the Archibald Cornett story and it has been the topic of every conversation, even when she went to church the weekend before the deposition and that it was general conversation in the community and that they all have known about the incident (DEP. 21-22);

15. That she had heard Archibald was run out because they called him black and that they said that because there are blacks and that's the only reason that she has ever heard given (DEP. 22-23);

16. That she not only heard of blacks being hung in the Galloway area but tarred and feathered as well (DEP. 23);

17. That, in particular, Magnolia Pipe Line had hired black people and brought them into Panola County and the Galloway Community and that those black people were tarred and feathered and that she would imagine it is on the Pipe Line records (DEP. 23);

18. That blacks have had to run all day and night and swim the river in freezing cold temperature in order to get away from tarrings and featherings (DEP. 23);

19. That the Ku Klux Klan was pretty active in the Galloway Community according to her father and grandfather (DEP. 24);

20. That Archibald Cornett was run out of the community because he had a black wife and he had taken her and lived with her (DEP. 25-26);

21. That the "Flatwoods" is a community named for what was once known for Panola County area of the country which encompassed Logansport, Louisiana (DEP. 33);

22. That Archibald Cornett was forced to move and that she heard he moved initially to Jaoquin and then up around Keatchie and DeSota Parish, Louisiana.

IV.

DOCUMENTS SUBMITTED IN SUPPORT OF AND AS EXHIBITS TO PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

1. Incorporated herein by reference and made a part hereof for all purposes Exhibits "1-A", "1-B", and "1-C" of Plaintiffs' Second Amended Complaint (originals on file with the Court as Exhibits 5-A, 5-B, and 5-C of First Amended Complaint). Exhibits 1-A, 1-B, and 1-C are a General Highway Map, a Vicinity Map and a Boundary Survey Plat.

2. (a) Incorporated herein by refernce and made a part hereof for all purposes Exhibits "2", "3", and "4" of Plaintiffs' Second Amended Complaint which are an executed Affidavit, No. 15 and Designation, field notes in File No. 30 and a Proof of Settlement perfecting title to Archibald Cornett Survey, respectively, all contained in the State of Texas General Land Office.

   (b) A July 25, 1867, Preemption Affidavit taken by Panola County Surveyor J. K. Williams from John Dailey states that Dailey believed the land in this suit to be vacant and that he resided on said land and that he claimed same under an Act approved by the State Legislature of Texas on the 12th day of November 1866, granting land to actual settlers on the Public Domain of the State of Texas. (See Exhibit "8")

   (c) Field Notes of the July 26, 1867, Survey of said 160 acres of land made for John Dailey by virtue of the foregoing Preemption Affidavit. Note the configuration is different on the northeast J. D. Dailey vis-a-vis the southeast (A. Cornett) Exhibit 3 of Second Amended Complaint. (See Exhibit "9")

   (d) On September 27, 1867, John Dailey proved before the County Judge, Henderson Fyke, and D. J. Spears and Williams H. Cockrell that he was *bona fide* settled upon vacant land situated in Panola County and he resided upon and cultivated same three years prior to September 27, 1867. (See Exhibit "10")

3. Incorporated herein and made a part hereof for all purposes is Exhibit "5" of the Second Amended Complaint which is Mongo Cornett's Death Certificate.

4. Ku Klux Klan activity collections from the Schomburg Center for Research in BLACK CULTURE

(The New York Public Library) Astor, Lenox and Tilden Foundations—515 Lenox Avenue at 135th Street (Exhibit "6" in Plaintiffs Second Amended Complaint).

5. Testimony by Dr. Linda Webb-Woodward will combine with Dr. Seltzer's foregoing reports, surveys, and/or testimony (See affidavit of Dr. Richard Seltzer Exhibit "11" tracing the history of Black people since the Mayflower, which history bears out that there were active efforts by the white Defendants and their ancestors to deny the rights of citizenship (land ownership, holdings, and inheritance and incidents) to Blacks, and which effort continues to this day in Panola County, Texas. Further, Dr. Webb-Woodard's testimony, which relies in part on the within-listed publications, will be offered to show the "condition" of Blacks from the stand point of attitudes, law, physical violence and intimidation and the role of "science" in the oppression of Black people and, that oppression relates to land ownership, holdings, and inheritance. The control of Blacks claiming land through ruthless means without absolutely any representation and with entrenched laws, e.g., statutes of limitations, to effect that control, and the justification and maintenance of said conditions and attitudes, all support Plaintiffs' theory for relief.

6. Incorporated herein and made a part hereof for all purposes is Exhibit "7" of the Second Amended Complaint which is an attitudinal article authored by Dr. Rick Seltzer entitled *The Social Location of Attitudes Towards the Ku Klux Klan.*

7. PARTIAL ABSTRACT OF TITLE for the Archibald Cornett Survey.

8. NAACP, *THE CRISIS* Magazine, . . . *A Tough Row to Hoe,* Vol. 93, No. 2 (February, 1986). This article examines the 120 year old field of "voting rights" and finds that, for Blacks, it's been . . .

a tough row to hoe. This lack of participation in government and the political process is intricately interwoven into Plaintiffs' argument that, based on their lack of basic freedoms, Plaintiffs existed in an extraordinary condition which made for extraordinary concealment which lead to the acreage being taken and such critical facts and their particulars being hidden from Plaintiffs or "inherently unknowable."

9. Lerone Bennett, Jr., *Before the Mayflower—A History of Black America* (5th Ed. 1969). Lerone Bennett, Jr., is a Social Historian and the author of nine books on the life and history of Black Americans. Mr. Bennett has served as advisor and consultant to several national organizations and commissions, including the National Advisory Commission on Civil Disorders. This book and its chapters on, *inter alia*. Black Powers in the Old South, The Life and Times of Jim Crow, and Red, White and Black: Race and Sex, are relevant to show the condition under which Plaintiffs labored at the time the Acreage was fraudulently taken and that currently exsits.

10. C. Eric Lincoln, *The Negro Pilgrimage In America,* (4th Ed. 1967). Again, this book chronicles the condition of the Plaintiffs and the iron-safe attitudes, customs, codes, traditions, etc., that have impacted Plaintiffs relative to the Acreage.

11. Chuck Summer Stone, *Black Political Power In America* (1970). This book discloses the various extralegal machinations and incredible savage acts of white brutality against Blacks attempting to exercise their civil rights and is relevant to understanding how and why Plaintiffs were denied the commodities needed to achieve self-support—land and the vote.

12. Charles E. Silberman, *Crisis In Black And White* (1964). This book combines with the foregoing books, reports and testimony to provide a meaningful and robust analysis of the conditions under which Plaintiffs have labored and during which the Acreage was forcefully and fraudulently taken.

13. Jim Schutze, *The Accommodations—The Politics of Race in an American City* (1986) Citadel Press, New Jersey. This book analyzes the attitudes, codes, customs, traditions and relationship between the two societies and classes of citizenship, i.e., Black versus White. The analysis centers on slavery in Texas and its residual impact on Texas (Black and White) through the late 1960's.

14. Texas State Historical Association, *Black Leaders—Texans for Their Times,* edited by Alwyn Barr and Robert A. Calvert, (1981) (second printing 1985). This book examines, *inter alia,* an example of a "free Negro" who also held slaves to avoid slavery himself and his relationship to land and whites in Texas.

15. Juan Williams, *Eyes on the Prize—America's Civil Rights Years, 1954-1965* (A Companion Volume to the Public Broadcasting System's six-part television series to be used in court as visual and demonstrative evidence of the disabilities placed on "free" Blacks during the aforestated period. The television series and accompanying volume recapture the dramatic and poignant events in the years between the Supreme Court's 1954 ruling that segregated schools were unconstitutional and Congress' approval of the 1965 Voting Rights Act.) (Viking Penguin, Inc., 1987).

16. Honorable A. Leon Higginbotham, Jr., *In the Matter of Color—Race & The American Legal Process: The Colonial Period,* Oxford University Press (1978) Fifth printing 1979. This book gives the background

for Blacks not being able to expect help whatsoever from the law. United States District Judge Higginbotham traces how the law developed relative to Blacks and "how the law itself, 'properly interpreted' was the oppressor, and argues that a direct lineage of contemptuous law exists from the wasteland centuries of slavery, through the hundred [plus] years of false equality since the Emancipation Proclamation, to the 'confrontation street politics' of the sixties."

IV.

ARGUMENTS AND AUTHORITIES

1. The main goal of Section 1983 was to override the corrupting influence of the Ku Klux Klan and its sympathizers on the government and law enforcement agencies of the southern states and one strong motive behind its enactment was great Congressional concern that the state courts had been deficient in protecting federal rights. *Allen v. McCurry,* 449 U.S. 90, 101 S. Ct. 411 (1980). *Burnett v. Grahan,* 104 S. Ct. 2924 (1984) (goals of reconstruction era civil rights statutes are compensation of persons whose civil rights have been violated and prevention of abuse of state power). Although adequate in theory, the State remedy for Blacks relative to land ownership, was not available in practice. To this extent, Congress wanted to provide a remedy in Federal Courts supplementary to any remedy any State might have. *See e.g., McNeese v. Board of Ed. for Community Unit School Dist. 187, Cahokia, Ill.,* 373 U.S. 668 (1963) (purposes of § 1983 were to override the results of the insidious laws, state acts, customs, traditions, codes and institutions peculiar to or having a peculiarly disparate impact on Plaintiffs and their class due to their race or

previous condition of servitude). *Accord, Moreno v. Henckel,* 431 F.2d 1299 (5th Cir. 1970). In enacting section 1983 (the Civil Rights of 1871), Congress had been especially concerned with murder, whippings, lynchings and "banishings," and that statutory remedy was meant to restore peace and "justice". *Jones v. Preuit & Mauldin,* 763 F.2d 1250 (11th Cir. 1985), *rehearing denied,* 772 F.2d 918 (11th Cir. 1985) (Section 1983 was intended to grant broad civil right of redress to any person victimized by an abuse of state power which deprived him of federally secured rights). (Emphasis supplied.) *Accord, e.g., Golden v. Biscayne Bay Yacht Club,* 530 F.2d 16 (5th Cir. 1976), *cert. denied,* 429 U.S. 872 (1976) (section 1983 "preserves and enforces" as against state action, rights, privileges and immunities secured by the Constitution and laws).

2. Section 1981 applies to all types of racial discrimination, public or private. *Taylor v. Jones,* 653 F.2d 1193 (8th Cir. 1981). A claim that county official acting under color of law and the County government as an institution refused to perform acts (*e.g.,* recordation of marriage or heirship affidavits), even discretionary ones, solely on the basis of Plaintiffs' race states a cause of action under 42 U.S.C. § 1981. *Jafree v. Barber,* 689 F.2d 640 (7th Cir. 1982). (1) In order to demonstrate a violation of § 1981, it is only necessary that the Plaintiffs show that they were unlawfully denied, by the Defendants, one of the rights protected by that section. *Vietnamese Fishermen's Ass'n v. Knights of Klu Klux Klan,* 518 F.Supp. 993 (S.D. Tex. 1981). (2) *Gordon v. City Cartersville,* 522 F.Supp. 753 (N.D. Ga. 1981) (where racial discrimination motivated by anti-black feel-

ing is directed against whites, said whites may recover under § 1981). (3) *Vaughn v. Pool Offshore Co., a Div. of Pool Co. of Texas,* 683 F.2d 922 (5th Cir. 1982) (must not only prove disparate and differential impact on persons but also prove governmental act or, in adopting or employing challenged practices or undertaking the challenged action, intended to treat similarly situated persons differently on basis of race); *Castaneda v. Pickard,* 648 F.2d 989 (5th Cir. 1981); *Vasquez v. McAllen Bag & Supply Co.,* 660 F.2d 686 (5th Cir. 1981), *cert. denied,* 458 U.S. 1122 (1981) (under § 1981 necessary to prove discriminatory intent).

The practices of: (1) not legally acknowledging the marriage between whites and ex-slaves or free blacks (2) failing or refusing to record such marital unions (3) refusing to acknowledge the issue of whites and ex-slaves or free blacks (4) the "tracking" of ex-slaves and free blacks on the county records with "FREEDMEN OWNERSHIP RECORDS" or other institutional indications for blacks by the Tax Office (5) the County's custom of refusing admittance of Blacks to the area containing the tax and/or deed records and/or of giving and certifying false information relative to same and for the benefit of Defendants and based solely on Plaintiffs race, previous condition of servitude and associational preference, and (6) custom of banishing Blacks and those associated with Blacks from certain areas in Panola County and keepng said exiles out by terrorism, which was enforced, enhanced and participated in by the Panola County government, until the Texas period of limitations on trying title to land expired.

VI.

SPECIFIC FACT ALLEGATIONS

1. The history of the condition of Blacks in Texas relative to their inability to hold property based solely on their race and previous condition of servitude was combined with fraudulent and concealed real property transactions under color of state custom and law and "terrorism". This system of divestment and "terrorism" was intentionally established by local government officials through direct involvement or through knowing acquiescence and through the administering of laws and customs specifically directed at the recently freed slaves and their descendants and those associated with them.

2. Plaintiffs conclude that the allegations in their complaint clearly show a condition and/or race specific system of allege intentional, constitutional deprivations of Federal civil rights to own, hold, and/or inherit land in the ex-Confederate, slave State, Texas. "But for" (1) a self-sealing, self-executing, self-concealing, racially dual system of citizenship intentionally mantained by Panola County, Texas through law and/or custom; (2) Ku Klux Klan and/or white hate group terrorism and purpose intentionally directed against Plaintiffs and their class based on race and/or association; (3) fraudulent recordations affecting land and an absolute absence of notice and opportunity to defend same, which recordations and lack of notice and opportunity to defend were specifically directed toward Blacks and were procedurally and substantively enhanced and/or encouraged by, among other things, Panola County's racially dual recordation, notice and/or law enforcement systems; and (4) Defendants' and/or their predecessors-in-title's active con-

cealment of material critical facts necessary to bring or timely discover this particular civil action, Plaintiffs would not have suffered those constitutional deprivations. Plaintiffs contend that dual, race conscious, legal and customary systems of recordation and notice practice employed by Panola County, Texas in an institutional sense have intentonally deprived and/or aided and abetted private citizens in unconstitutionally depriving Plaintiffs of their rights to own, hold and inherit land. "But for" those racially based recordation and notice systems, Plaintiffs would have owned, held and been able to pass on or inherit and affirmatively deal with the land sought to be recovered as a remedy herein. Panola County, Texas thus was and is the "moving force" behind the complained of deprivations and the *sine qua non* for private, racially, discriminatory actions taken against Plaintiffs and the loss of the Acreage.

3. This civil rights action for damages and injunctive and declaratory relief is brought on behalf of Plaintiffs, the Estate of Archibald Cornett, Deceased, and heirs of ex-slave Sally Williams Cornett which heirs are presently denied the right to inherit the "Acreage" herein below described based on traditional and contemporary intentional discriminatory treatment, legal and customary, in recordation, civil rights enforcement, judicial and extrajudicial foreclosure, and relative to basic, minimum civil liberties consistent with equal citizenship and necessary to protect Plaintiffs' land holdings. The institutional Defendant in this action is the County of Panola, State of Texas for affirmatively allowing, encouraging, enhancing and participating in the conditions, laws and customs complained of through County agencies (e.g., Panola County Tax Assessor's Office, Sheriff's Office, Deed Records Of-

fice), prosecuting attorneys, their supervisors, and other elected officials of Panola County that intentionally made, perpetrated and encouraged private actions and inspired illegal conduct through dual racial policy, practice and custom. Panola County, Texas thus was and is the "moving force" behind the complained of deprivations and the *sine qua non* for private, racially discriminatory actions taken against Plaintiffs and their predecessors in interest and loss of the Acreage.

4. The system of two societies, one white and one Black, was extraordinarily self-executing, self-sealing and self-concealing. When combined with individual Defendants' affirmative fradulent concealments and acts of violence and Panola County's affirmative enhancement, encouragement and perpetuation of same through its dual, racial systems of recordation, judicial involvement and law enforcement, and the extraordinary condition of servitude forming the basis of Plaintiffs' complaint. Plaintiffs' claims are not otherwise time barred on the facts, circumstances and conditions alleged and relied on herein,[4] which facts, circumstances and conditions were in-

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4. The general historical allegations relied upon herein have their origins in an opinion penned by a Southern Chief Justice of the United States Supreme Court, the Honorable Roger B. Taney. *Dred Scott v. Sandford*, 60 U.S. (19 HOW.) 393 (1857). Even the Great Emancipator himself, before he became president, expressed his unalterable opposition to political or social equality between the races. Thus in a speech he gave in 1858 he said:

> I will say then that I am not, nor ever have been in favor of bringing about in any way the social and political equality of the white and the black races—that I am not nor ever have been in favor of making voters or jurors of Negroes nor of qualifying them to hold office, nor to intermarry with white people; and I will say in addition to this that there is a physical difference between white and black races which I believe will forbid the two races living together on terms of social and political equality.

tended to be extraordinary and self-sealing, self-executing, and self-concealing for a period of time necessary to bar any law remedy relative to the Acreage.

5. Archibald Cornett, Sally Williams Cornett and their heirs and Sally's race and those associated with Blacks have been intentionally denied "fundamental" rights guaranteed in the United States Constitution based on their race and previous condition of servitude (incidents and badges of slavery).[5]

6. The series of events leading to this civil action were not misfortunate and unintended but were a pattern and routine practice directed at Plaintiffs' race. The denial of wrong doing by county officials and employees and their excuses offered to explain how someone other than Archibald and Sally Williams Cornetts' or their heirs could exercise ownership rights with the Acreage amounts to more than bare violations but are part of an aggravating circumstance. Further, the natural, probable and foreseeable result of enforcing a racially dual system of recordation and not protecting Plaintiffs' race from Klan

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And inasmuch as they cannot so live, while they do remain together, there must be the position of superior and inferior and I as much as any other man am in favor of having superior position assigned to the white race. Silberman, Charles E., *Crisis in Black and White,* pp. 92-93 (Vintage Books 1964).

5. In January 1866, Senator Lyman Trumbull, Republican - Illinois, stated in emphasizing the basis for the Civil Rights Act of 1866 [42 U.S.C. §§ 1981-1982], that civil liberty is the liberty to which every citizen is entitled . . . and . . . [a]ny statute [code or custom] which is not equal to all, and which deprives any citizen of civil rights which are secured to other citizens, is unjust encroachment upon his liberty; and is, in fact, a badge of [servitude], which by the Constitution is prohibited. Cook, Joseph G. and Sobieski, Jr., John L., 1 CIVIL RIGHTS ACTIONS 29 (Matthew Bender (Times Mirror Books) 1986).

and white hate activity was to cause land holdings in Panola County and the whole of Texas to shift by fraud and terror from Blacks to Whites and hence to increase or perpetuate the condition of servitude, e.g., slaves could not hold, own or inherit land and Sally Williams Cornett and her issue by Archibald could not hold or own land and Plaintiffs cannot inherit same based on Sally's race. The county officials acted against the Plaintiffs due to *de jure* and *de facto* racial classifications that had and continue to have reasonably foreseeable discriminatory effect and were customs and policies applied and currently applied in an intentionally, discriminatory manner.[6]

VII.

In support of this Response, Plaintiffs pray that the Court take Judicial Notice of the following:

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6. Levy, Martin L., *The Supreme Court in Retreat: Wealth Discrimination,* 4 Texas Southern University Law Review (Special Issue No. 2) 209, 226 (1977). That democratic rule in itself does not guarantee "individual freedom and rights," particularly in regard to minorities, is an historical fact. Slavery under representative government in the United States from 1787-1864, and Hitler's majority election by the German Reichstag serve as explicit examples of such. Silberman, Charles E., *Crisis in Black and White,* p. 78 (1964). Over one hundred forty-eight years ago, Alexis de Tocqueville observed that there is a natural prejudice that prompts men to despise whoever has been inferior long after he has become their equal, i.e., feelings of racial superiority "die hard." Though the Thirteenth, Fourteenth and Fifteenth Amendments abolished slavery and made the ex-slave equal to the ex-master, constant, continuous and sustained civil rights legislation, litigation and protests have been aimed at securing meaningful and robust equality of citizenship clearly denied based solely on race and/or previous condition of servitude. *See* e.g., *Sweat v. Painter,* 339 U.S.C. 629 (1950); *Brown v. Board of Education,* 347 U.S. 483 (1954); *U.S. v. State of Texas,* 330 F. Supp. 235 (E.D. Tex. 1971) (Freestone County); 50 Tex. Bar Journal, No. 1, p. 97 (Jan. 1987).

a. That from 1861 through 1983, the Congress of the United States of America prepared, passed and continued, renewed and/or extended legislation which sole purpose was the elimination of racial distinctions, codes, customs and laws that discriminate against Plaintiffs and their class;[7]

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7. Cook, Joseph G. *and* Sobieski, Jr., John L. 1 *CIVIL RIGHTS ACTIONS* 174-186 (Matthew Bender (Times Mirror Books) 1986). The Thirteenth Amendment above was sufficient to abolish slavery, but something more was needed to abolish unequal laws. For after the Civil War many of the southern legislatures enacted Black Codes, which, in the eyes of the proponents of the Civil Rights Act of 1866 [42 U.S.C. §§ 1981-1982], effectively reenslaved the freedmen. Black codes made the freedman a social outcast, industrially a serf, legally a separate and oppressed class. Slavery, abolished by the organic law of the nation, was in fact revived by the statutes of the states. *See also* J. Tenbroek, EQUAL UNDER LAW 180 (1965). Noteworthy remarks concerning the intended scope of the civil rights bills of the late 1800s were offered by one of the ardent opponents of the bills passage and show the clear and unanimous recognition of the foregoing conditions existing in ex-slave successionist states:

> [The bill] proscribes all discriminations against negroes in favor of white persons that may be made anywhere in the United States by any "ordinance, regulation, or custom," as well as by "law or statute."
>
> But there are civil rights, immunities, and privileges, "which ordinances, regulations, and customs" confer upon white persons everywhere in the United States, and withhold from negroes. On ships and steamboats the most comfortable and handsomely furnished cabins and staterooms, the first tables, and other privileges; in public hotels the most luxuriously appointed parlors, chambers, and saloons, the most sumptuous tables, and baths; in churches not only the most softly cushioned pews, but the most eligible sections of the edifices; on railroads, national, local and street, not only seats, but whole cars, are assigned to white persons to the exclusion of negroes and mulattoes. All these discriminations in the entire society of the United States are established by ordinances, regulations, and customs. [Said] bill proposes to break down and sweep them all away, and to consummate their destruction, and brings the two races upon the same great plane of perfect equality, declares all persons who enforce those distinctions to be criminals against the United States, and subjects them to punishment by fine and imprisonment . . .

b. That from 1861 until 1983, Black people in Panola County could not forcibly reclaim land or use self-help to reclaim or to exercise available state means of possessing, claiming and owning land that was forcefully taken and/or held by any white man claiming a superior right thereto;

c. That the records, if any, of the federal court and circuit in which this Court sits cannot find in its backlog of cases dating from 1861 through 1983 any suit wherein any black man or woman successfully gained ouster or brought reclamation actions against any white man or woman in Panola County, Texas;

d. That there has been constant and substantial litigation relative to the citizenship status of Blacks as a class of Americans that has gone throughout the early 1980s;

e. That the Ku Klux Klan and white hate groups still exist. For example, the 1980 Fifth Circuit Court of Appeals case wherein the United Klans of America sued FBI agents for damages arising out of FBI's counter intelligence program designed to expose, disrupt and otherwise neutralize the Klan. *United Klans of America and Knights of the Ku Klux Klan, Inc. v. James L. McGovern, former special agent in charge, Birmingham office of Federal Bureau of Investigation, et al.*, 621 F.2d 152 (5th Cir. 1980).

WHEREFORE, PREMISES CONSIDERED, Defendants' Motions for Summary Judgment should be denied in all respects.

Respectfully submitted,

Attorneys for Plaintiffs

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By: /s/ DONALD W. HICKS, SR.
Donald W. Hicks, Sr.

By: /s/ DONALD W. HILL
Donald W. Hill

EXHIBIT "11"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

Civil Case Number: TY-84-442-CA

ESTATE OF ARCHIBALD CORNETT,
et. al.,

v.

ESTATE OF M.D. SIKES,
et. al.

AFFIDAVIT OF RICHARD A. SELTZER

Richard A. Seltzer, being duly sworn, deposes and states as follows:

1. I am an associate professor of political science at Howard University. My teaching responsibilities include research methods, statistics and survey techniques. I have conducted research and published articles on juror attitudes (see attached resume). I have previously been qualified as an expert in statistics, survey research and juror attitudes in three United States District Courts and five state courts. I have conducted over twenty-five surveys on juror attitudes.

2. I was asked by the attorneys for the plaintiffs in this case to conduct a study on whether or not the plaintiffs are more likely today to receive a fair trial in the Eastern District of Texas (Tyler Division) compared to the 1960's.

3. Jurors in this case will be directly influenced by their racial attitudes. A jury holding negative attitudes toward blacks would be incapable of rendering a fair and impartial verdict.

4. Survey data on racial attitudes allow one to determine if racial attitudes have changed over time. An established procedure in my profession is to ask identical questions at different points in time. If the response between the time periods are different it shows that changes in attitudes have occurred.

5. I have searched extensively for surveys that were conducted in Texas in the 1960's in which questions gauging racial attitudes were asked. I have found no surveys of this type conducted in the region of this United States District Court. However, through the auspices of the Roper Center for Public Opinion Research at the University of Conneticut I found an appropriate survey which was conducted in Texas in 1967. The Roper Center is the largest national archive of survey data in the United States.

6. The Texas Poll, conducted by Belden Associates, is an established and reputable polling organization. In August, 1967, Belden Associates conducted a poll of 1,000 residents of Texas who were over eighteen years of age. In this survey they asked numerous questions about racial attitudes. I contacted the Roper Center to conduct computer runs on this data set.

7. The National Opinion Research Center (NORC) is one of the most prestigious and reputable polling organizations in the country. They conduct the General Social Survey (GSS) every year.[1] NORC in its most recent

1. Because of funding problems NORC conducted the GSS semi-annually for a few years.

GSS in 1985 asked respondents several questions about racial attitudes. The GSS in 1985 was a nationwide sample of 1468 respondents over the age of 18.

8. I designed a survey to measure attitudes toward this civil action (see appendix). A telephone survey of 300 respondents over the age of 18 from the Eastern District of Texas (Tyler Division) was conducted between January 14, 1985 and January 17, 1986. Action Surveys Inc. of Rockville, Maryland, fielded the questionnaire. Action Surveys is an established survey house whose services I have used in the past. It is my professional opinion that Action Surveys conducted this survey with the high standards demanded of our profession.

9. Action Surveys drew their telephone list by using a standard form of random-digit dialing. This form of sampling allows for numbers from households with both listed and unlisted telephone numbers. Within each household the interviewers randomly chose the respondent to be interviewed.

10. The sample was collected from fourteen counties of Texas: Anderson, Angelina, Cherokee, Gregg, Henderson, Houston, Nacogdoches, Panola, Rains, Rusk, Shelby, Smith, Van Zandt and Wood. The jury plan for the Tyler division was recently modified and encompasses ten of the above counties. However, since we were attempting to compare attitudes with those in existence in 1967 it was appropriate to use the above fourteen counties as the sample base. Except for rare exceptions, the survey results are identical in comparing the ten counties with the four counties that were removed from this Division. I report both sets of statistics in the tables. However, since the differences are small I only discuss the 14 county results in the text of this affidavit.

11. After the data were collected I compared the racial, sexual, and country distribution of the sample with the distribution found in the 1980 census.[2] The results from the survey were within two percentage points on the above criteria (see Table 1). The Action Surveys sample correctly reflected this United States District Court region.[3]

COMPARISONS WITH 1967

12. The Belden survey was of all Texas. I made the survey results more comparable with our 1986 survey by also examining only those respondents in the Belden survey who lived in rural areas. The comparisons with rural Texas in 1967 are the most appropriate. However, I report both sets of differences in the tables and text. It is reasonable to assume the 1967 Belden survey responses is a fair reflection of attitudes in the Tyler Division in the 1960's.

13. For each of the comparisons between the Belden survey and our survey the corresponding p-value was computed. These p-values were derived from Chi Square and indicate the appropriate level of statistical significance. For example, If a p-value for a difference in response rate to a question between the two surveys is .02, this indicates that there is approximately 2 possibilities in 100 of the difference occurring by chance. It is customary with social statistics to treat any p-value $<.05$ as being significant.

---

2. Bureau of the Census, *General Population Characteristics: Texas,* (Washington, D.C.: Government Printing Office, 1982), Table 45.

3. I compared the differences found in Table 1 using standard tests of significance (Chi Square and test comparing a sample proportion with a known population proportion). These differences were quite small ($p > .50$) and signify that the differences were a result of chance.

In essence, if the p-value $<.05$, as it is in our hypothetical example, then one would conclude that there is a significant difference between the surveys. All comparisons found between the two surveys were found to be significant (all p's $<.01$).

14. The Belden survey asked five questions of whites which gauged racial attitudes. These questions asked respondents if they would accept or reject certain social situations with blacks: eating in the same restaurants, attending the same church, being employed at the same workplace, living in the same neighborhood, and having a black for a roommate at college.[4]

15. On all five of these questions there were substantial and significant differences between the two surveys. (see Table 2). Belden found that in 1967, 71.9% of all Texas residents accepted the social situation of eating with blacks in the same restaurant. The corresponding figure in 1986 in the Tyler Division was 96.0%—a 24.1% difference. Belden found that only 56.3% of 1967 rural residents accepted this situation. If we used this figure for comparison the difference between the two surveys is 39.7%.

16. The next four questions indicate increasing rejection of blacks among whites. For example, the last question asks if white respondents would accept a black as a college roommate for their son or daughter. In 1967, only 27.2% of Texans would accept this social situation. In the rural areas the acceptance rate was even lower—10.7%. In 1986 we found the acceptance rate in the

---

4. The Belden survey asked seven additional questions using the same format. In order to reduce the cost of interviewing, I did not use the full Belden set. I chose the five questions which were most representative of the twleve Belden questions

Tyler Division to be 67.1%. This represents a 39.9% increase over all Texans in 1967 and a 56.4% increase over rural Texans.

17. The other three questions show comparable results:

a) church attendance

92.7% - 70.6% = 22.1% [all Texas]
92.7% - 51.9% = 40.8% [rural Texas]

b) workplace

98.0% - 81.5% = 16.5% [all Texas]
98.0% - 65.8% = 32.2% [rural Texas]

c) neighbor

80.9% - 42.6% = 38.3% [all Texas]
80.9% - 24.7% = 56.2% [rural Texas]

18. On all five questions the results show a significant and substantial increase in racial tolerance among whites in the Tyler Division. These results are not unexpected. Throughout the country there has been strong positive changes in racial attitudes on abstract questions since the 1960's.

19. Although, there has been a substantial shift in abstract racial attitudes, there may not have been a large shift in people's willingness to implement actions resulting in racial changes. Other researchers have found that changes in abstract attitudes do not necessarily correspond with changes in behavior.[5]

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5. For more on changes over time in racial attitudes see Howard Schuman, Charlotte Steeh, and Lawrence Bobo. *Racial Attitudes in America: Trends and Interpretation.* (Cambridge: Harvard University Press, 1985). These authors point to large positive change in attitudes about abstract racial issues. However, they found less change on implementation of racial changes (busing, affirmative action, etc.).

COMPARISONS WITH NORC

20. I was also asked to determine if residents of the Tyler Division hold more negative racial attitudes than other comparable persons residing in their geographical region. NORC in 1985 asked three questions which I duplicated (see Table 3). In order to make the results more comparable, I only analyze NORC respondents from the West South-Central states.

21. NORC asked respondents to agree or disagree that "blacks shouldn't push themselves where they're not wanted. Fifty-seven percent of NORC respondents agreed compared to 64.1% of respondents in the Tyler survey. This difference was not statistically significant.

22. The second question asked people to agree or disagree that "white people have a right to keep blacks out of their neighborhoods if they want to and blacks should respect that right." A little over one-third (34.1%) of respondents from Tyler agreed with this statement compared to 21.3% from the NORC study. This difference was statistically significant ($p = .02$).

23. The third question asked respondents, "Do you think there should be laws against marriages between blacks and whites. Approximately one-third of respondents from both surveys responded yes to this question. The difference between the two studies was small.

24. Only one of these three questions showed a significant difference between the two surveys. In many ways, opinions in the Tyler Division approach consensus with the region (West South-Central United States). However, the one attitude in which a significant difference was found (integrated housing), impacts most heavily on

this case. Plaintiffs argue that the Cornett family was driven off its land because their neighbors did not want blacks living in the area. If the Cornett family wins this civil action there is a strong possibility that blacks might move to the area under dispute. The significant difference that was found between the NORC study and the Tyler Division indicates that residents of the Tyler Division are more opposed to blacks living in their area compared to other citizens in the West South Central states.

TYLER RESIDENTS ON FAIRNESS IN THE COURTS

25. I asked two questions which measured if residents of the Tyler Division believe the court system today is fairer toward blacks compared to twenty years ago (see Table 4). Residents were first asked to agree or disagree that "twenty years ago it was difficult for a black man to get a fair trial in the courts." Over three-quarters of both white and black respondents agreed with this statement.

26. The second question asked respondents to agree or disagree that "a black man is more likely to get a fair trial in the courts today compared to twenty years ago." Over ninety percent of both white and black respondents agreed with this statement.

27. There is a strong consensus in both the white and black community of the Tyler Division that blacks could not receive a fair trial twenty years ago and that the chance of blacks receiving a fair trial today is much greater.

CONCLUSIONS

28. There has been a dramatic shift in racial attitudes in the Tyler Division since the 1960's. Whites are much more tolerant of blacks today compared to twenty years ago. This change is mirrored by the finding that both whites and blacks of the Tyler Division believe that a black man has a much greater chance of receiving a fair trial today compared to twenty years ago. White racism was embedded in the belief structure of Texans twenty years ago. It is clear that plaintiffs had little chance of empanelling a jury twenty years ago which would have even considered granting relief to the plaintiffs.

29. Although there has been substantial change in racial attitudes, citizens of the Tyler Division hold more negative attitudes toward housing integration than other residents of the West South-Central states. This may negatively impact on the plaintiff's ability to receive a fair trial in the Tyler Division. In addition, research by other scholars has shown that changes in abstract racial attitudes do not necessarily result in change in behavior.

_____

Richard A. Seltzer

Subscribed and sworn before me by Richard A. Seltzer this _____ day of March, 1986.

_____

NOTARY PUBLIC

TABLE 1

CENSUS COMPARISONS
TYLER DIVISION SURVEY
(age 18+)

County	*Total Male*	*Total Female*	*Total Population*	*Percent Population*	*% Population In Survey*
Anderson	15440	12927	28,367	6.3	7.0
Angelina	20962	22832	43,794	9.7	10.3
Cherokee	13127	14502	27,629	6.1	7.0
Gregg	33883	36774	70,657	15.6	14.0
Henderson	14993	16572	31,565	7.0	6.7
Houston	9389	7473	16,862	3.7	3.3
Nacogdoches	16742	18796	35,538	7.9	8.7
Panola	6944	7893	14,837	3.3	3.3
Rains	1755	1870	3,625	0.8	1.7
Rusk	13882	15828	29,710	6.6	6.7
Shelby	7725	8872	16,597	3.7	3.3
Smith	42577	48604	91,181	20.2	20.0
Van Zandt	10898	12046	22,944	5.1	4.7
Wood	8709	9798	18,507	4.1	3.3
	214,513	250,227	451,813		

% female in population of counties - age 18+ - 1980 Census = 52.0%
% female in survey = 51.0%

% black in population of counties - age 18+ - 1980 Census = 16.3%
% black in survey = 15.7%

TABLE 2

We would like to find out how people feel about integration. For each of the following situations tell me whether you completely accept, somewhat accept, somewhat reject, or completely reject each of there things? (whites only)

	Tyler 14 Cnties 1986	*Tyler 10 Cnties 1986*	*All Texas 1967*	*Rural Texas 1967*
% Accept (whites only)				
Blacks eating in same restaurant with you	96.0%	95.7%	71.9%	56.3%
Blacks attending your church	92.7	93.4	70.6	51.9
Blacks working side by side with you in the same kind of job	98.0	97.8	81.5	65.8
Blacks living next door to you	80.9	80.2	42.6	24.7
Having a black as a roommate for your son or daughter at college	67.1	67.0	27.2	10.7

TABLE 3

Here are some opinions other people have expressed in connecton with black-white relations. For each of these statements tell me whether you agree strongly, agree somewhat, disagree somewhat, or disagree strongly? (whites only)

	Tyler 14 Cnties 1986	*Tyler 10 Cnties 1986*	*NORC-1985 West S. States*
Blacks shouldn't push themselves where they're not wanted (% agree)	64.1%	62.0%	57.1%
White people have a right to keep blacks out of their neighborhoods if they want to and blacks should respect that right (% agree)	34.1	34.9	21.3
Do you think there should be laws against marriages between blacks and whites? (% yes)	34.3	36.7	33.1

TABLE 4

Here are some opinions other people have expressed in connection with black-white relations. For each of these statements tell me whether you agree strongly, agree somewhat, disagree somewhat, or disagree strongly?

Twenty years ago it was difficult for a black man to get a fair trial in the courts

	Tyler 14 Cnties 1986 Whites	*Tyler 14 Cnties 1986 Blacks*	*Tyler 10 Cnties 1986 Whites*	*Tyler 10 Cnties 1986 Blacks*
agree strongly	37.2%	65.9%	40.9%	66.7%
agree somewhat	37.6	13.6	35.1	15.2
disagree somewhat	17.1	13.6	19.3	15.2
disagree strongly	8.1	6.8	4.7	3.0
total agree	74.8	79.5	76.0	81.9

A black man is more likely to get a fair trial in the courts today compared to twenty years ago

	Tyler 14 Cnties 1986 Whites	*Tyler 14 Cnties 1986 Blacks*	*Tyler 10 Cnties 1986 Whites*	*Tyler 10 Cnties 1986 Blacks*
agree strongly	54.1%	63.8%	50.0%	68.6%
agree somewhat	38.4	29.8	45.0	28.6
disagree somewhat	3.7	2.1	3.3	0.0
disagree strongly	3.7	4.3	1.7	2.0
total agree	92.5	93.6	95.0	97.2

CURRICULUM VITAE

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I. PERSONAL

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II. EDUCATION

Undergraduate:

University of Denver

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Graduate School of International Studies
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III. ACADEMIC FIELDS OF INTEREST

a. Methodology: including public opinion surveys, statistical analysis, and the philosophy of science.

b. Political Economy: including micro and macro theory, international trade and finance.

IV. DISSERTATION

Title: A Five-School Typology of Theorists of the Origins of American Imperialism, 1870-1901.

V. SELECTED LIST OF PUBLICATIONS AND PROFESSIONAL ACTIVITIES

R. Seltzer

"Survey Finds Extensive Klan Sympathy." *Poverty Law Report,* Southern Poverty Law Center. Vol. 10. No. 3. 1982.

R. Seltzer and Charles Turner

"Estimating the Effects of Interviewer Characteristics in Survey Reponses: Race and Gender in a Telephone Survey." Working Paper No. 83-4. Center for Survey Research (University of Massachusetts and the Joint Center for Urban Studies at MIT and Harvard University). 1983.

R. Seltzer

"Sponsorship Effects in an Attitudinal Survey." *Political Methodology,* Vol. 9, No. 4. 1983. pp. 447-453.

R. Seltzer

"An Empirical Examination of Support for the Death Penalty: The Case of Two Maryland Counties." monograph of NAACP Legal Defense and Educational Fund, 1984.

R. Seltzer and Edward Thompson

"Attitudes in the Nation's Capitol Toward Discrimination and Affirmative Action for Minorities and Women" A Monograph of the Institute for Urban Affairs and Research. Howard University, March, 1985.

R. Seltzer and Robert Smith

"Race and Civil Liberties." *Social Science Quarterly,* Vol. 66, March, 1985. pp. 155-162.

C. Stroman and R. Seltzer

"Media use and Perceptions of Crime." *Journalism Quarterly,* Vol. 62, No. 2. 1985. pp. 340-345.

R. Seltzer and Robert C. Smith

"Race and Ideology: A Research Note Measuring Liberalism and Conservatism in Black America," *Phylon,* Vol. 46, No. 2, 1985. pp. 98-105.

R. Seltzer

"The Social Location of Attitudes Toward the Ku Klux Klan," forthcoming: *Journal of Black Studies,* 1986.

R. Seltzer and Robert Smith

"Race and Alienation: A Multidimensional Analysis," forthcoming: *New England Journal of Black Studies,* 1986

R. Seltzer, G. Lopes, R. Canan, and M. Dayan

"The Effect of Death Qualification on the Propensity of Jurors to Convict: The Case of Maryland," forthcoming: *Howard University Law Journal,* 1986.

VI. PAPERS AT PROFESSIONAL CONFERENCES

R. Seltzer and Baldave Singh

"The Effects of Social Criteria on University Investment Portfolios as They Relate to Southern Africa and the Native American Reservations." paper presented at the African Studies Convention, Chicago, November 2, 1974.

R. Seltzer

"An Example of the Use of Exploratory Data Analysis: Multinational Corporations." paper presented at International Studies Association/West Convention, San Francisco, March 20, 1976.

R. Seltzer and Dan Rodriguez

"Conflicts in Consumer Coops: A Survey of the Common Market Food Coop." paper presented at the 4th Annual Conference on Utopian Studies, Denver, October 12, 1979

Robert Smith and R. Seltzer

"Race and Ideology: Patterns of Issue Differentiation." paper presented at the Annual Meeting of the National Conference of Black Political Scientists." Washington, D.C., April 19, 1984.

VII. REPORTS

R. Seltzer, Joseph McCormick, and Walter Hill

"Housing Conditions and Attitudes Toward Housing and Related Issues in Washington, D.C.," monograph available by writing the authors at the Department of Political Science at Howard University. 1981.

R. Seltzer and Earl Wright

"Attitudes of Students and Residents of Washington, D.C. Toward Howard University." A report to the Howard University Administration. 1984.

R. Seltzer

"A Survey of Attitudes in Ivy City Toward Conditions and Proposed Improvements." A report to the community and Mount Vernon United Methodist Church. 1985.

VIII. RESEARCH IN PROGRESS

"Jurors: Reasons and Methods for Decision Making."

This project examines the juror decision-making process in light of selected factors.

IX. COURSES TAUGHT

Undergraduate

American National Government
Introduction to Research
Seminar in Survey Methods
Seminar in Census Data

Theories of Marxism
Chinese Politics
International Relations

Graduate

The Philosophy of Science
Seminar in Survey Techniques
Behavioral Research Methods
Multivariate Statistics
Chinese Politics
Political Economy
Theories of Comparative Politics

X. OTHER PROFESSIONAL EXPERIENCE

I have conducted over thirty public opinion surveys. Some of the topics I have surveyed that are not mentioned in my publication list include: dropouts from predominantly minority colleges, the jury composition in Staten Island, attitudes toward a college in Ohio, the recall petition of a Colorado politician, attitudes toward civil liberties in Washington, D.C., and attitudes of Washington, D.C. School teachers and administrators toward merit pay raises.

In addition, I have worked as a consultant on jury selection procedures and case analyses in over thirty civil and criminal trials. I have testified in some of these cases as an expert witness about interpretation of social science survey data. Some of the cases I have worked on include:

Crumsey *vs.* The Justice Knights of the Ku Klux Klan

A successful civil action against the Ku Klux Klan in Chattanooga, Tennessee for damages and injunctive relief.

Her Majesty the Queen *vs.* Morgentaller

The successful defense of a doctor charged in Canada with committing illegal abortions at his "free standing clinic."

Hobson *vs.* Federal Bureau of Investigation

A successful civil action against the FBI for illegal searches and seizures against civil rights and anti-war activists.

Maryland *vs.* Bailey

A jury composition challenge in a death penalty case.

McSurely *vs.* McClellan

A successful law suit against the estate of Senator John McClellan and others for violations of the plaintiffs' civil rights.

Texas *vs.* Geter

The well publicized case of Lenell Geter, successfully defended by the NAACP, who was charged with armed robbery of a restaurant when nine of his co-workers said he was at work at the time.

DEMOGRAPHIC ANALYSIS OF JURY POOL
(Cornett Case)

In the following analysis I analyze white respondents only. We can safely assume that in jury selection the defense will strike almost all blacks. It is doubtful that the plaintiffs will strike any blacks. Therefore, in this analysis I concentrate upon white respondents.

In the survey there were fifteen attitudinal questions which were relevant to the case. These questions measured racism and attitudes toward the case. There were sixteen questions on the background of the respondents (sex, age, etc.). I crosstabulated all of the attitudinal questions by virtually all of the background questions.[1] Crosstabulations allow one to determine, for example, whether men are more likely to support a position than women or whether less educated people are more likely to support a position than better educated people.

Following each question in the table is the response distribution for that question and any statistically significant crosstabulations that occurred. Statistical significance refers to whether the observed differences between groups could have occurred by chance. In the first table one can see that 40.3% of those who read a newspaper 0-1 times a week agree strongly that it was difficult for a black man to get a fair trial twenty years ago. The corresponding agreement rates for those who read a newspaper 2-6 times a week and everyday were 49.2% and 28.8%, respectively. To the right of that table is the "p-value." The p-value states what is the probability that this difference could have occurred by chance. A p-value of .03 signifies that there is less that a 3% probability that this difference could have occurred by chance. In statistics it is customary to conclude that p-values below .05 are statistically significant. I only report demographic differences if the p-value is less than .10.

After I finished analyzing the crosstabulations I used a more sophisticated type of analysis called log-linear model-

1. I did not crosstabulate the attitudinal questions by county as I had insufficient numbers of respondents wihin the fourteen counties.

ling. Simply put, log-linear modelling allows one to determine whether an apparent relation between two variables is simply a result of a third variable. For example, in these data we often find that older people and less educated people appear more anti-Cornett. However, We know that older people have less education. Perhaps education (or age) has no relation to the attitudes and the apparent relationship between education and attitudes disappears after one controls for age. I summarize the results of the log-linear modelling in simple terms in the following analysis.

In the following paragraphs I briefly summarize each of the demographic variables.

Sex had no effect upon any of the attitudes.

Age Those over the age of 55 were more likely to hold racist attitudes. However, those over the age of 55 were not more likely to be anti-Cornett in the Cornett questions.

Education Less educated people were more likely to hold racist attitudes. However, the differences between educational groups often disappeared after controlling for other variables. Surprisingly, on the questions relating to the case, better educated people were more likely to hold anti-Cornett positions. One wants to be particularly cautious of the liberal sounding educated white. They may know how to give the socially correct response during the voir dire, but may not be better for the plaintiffs.

Employment Status We were only able to compare those who were employed full time with all other respondents. There were not enough retired, unemployed, students or housewives to analyze separately. People who were employed held less racist attitudes than other people.

Occupation had no effect upon any of the attitudes.

Type of Employer had no effect upon any of the attitudes.

Marital Status Married people held less racist attitudes than any other group. There were too few widowed, divorced, or never married people to analyze separately.

Where Respondent Born This variable was not analyzed given that almost the entire sample was born in Texas.

Religion Members of fundamentalist religious sects (Baptists, etc.) held more racist attitudes than other people. However, religion had no effect on attitudes toward the case.

Frequency of Church Attendance People who attended church once a week or more were more likely to hold racist attitudes.

How Often Read the Paper had no consistent effect upon the attitudes.

How Often Watch TV News There was a very slight tendency for those who watch the TV news every night to hold less racist attitudes.

Registered to Vote Respondents who are not registered to vote are much more anti-racist and in support of the Cornett position. Unfortunately, the jury pool excludes citizens who are not registered to vote. If the Cornett family had an extensive bank account I would recommend that they challenge the method of jury selection in this District.

Political Party was a highly complicated variable. Independents appeared to be less racist and on one ques-

tion, Democrats were the most racist. However, Democrats were the least likely to believe that the Cornett case was absurd.

Summary: These results were much less consistent than virtually any other data set I have examined in similar cases. Ususally, one can pick obvious choices of demographic groups to avoid in jury selection. Here, that is not the case. I would like to discuss more with you the nature of the defendants. How sympathetic will they be to a jury. Are they wealthy, middle class, or working class. I would probably choose jurors who would least identify with the defendants. When I come to testify we should talk about this issue at length. I believe the voir dire will be particularly important in your case.

Here are some opinions other people have expressed in connection with black-white relations. For each of these statements tell me whether you agree strongly, agree somewhat, disagree somewhat, or disagree strongly? (looking at whites only)

Twenty years ago it was difficult for a black man to get a fair trial in the courts

agree strongly	37.2
agree somewhat	37.6
disagree somewhat	17.1
disagree strongly	8.1

	agree strongly	
How often read paper		
0-1 a week	40.3%	(p=.03)
2-6 a week	49.2	
everyday	28.8	

A black man is more likely to get a fair trial in the courts today compared to twenty years ago

agree strongly	54.1
agree somewhat	38.4
disagree somewhat	3.7
disagree strongly	3.7

agree strongly

Political party

Democrat	60.8%	(p=.04)
Republican	64.3	
Independent	41.7	

If a black man is wise, he will think twice before he trusts a white man as much as he trusts another black man.

agree strongly	11.2%
agree somewhat	18.3
disagree somewhat	24.7
disagree strongly	28.7
don't know	17.1

agree

education

hs grad or less	43.8%	(p=.005)
college	24.7	

How often go to church

once a week or more	27.9	(p=.02)
once a month or less	43.3	

Registered to vote

yes	30.7	(p=.01)
no	52.8	

Blacks shouldn't push themselves where they're not wanted

agree strongly	30.7%
agree somewhat	26.3
disagree somewhat	17.1
disagree strongly	14.7
don't know	11.2

agree

Age

18-34	58.4%	(p=.08)
35-54	60.3	
55+	74.6	

White people have a right to keep blacks out of their neighborhoods if they want to and blacks should respect that right

agree strongly	15.1%
agree somewhat	16.3
disagree somewhat	21.5
disagree strongly	39.4
don't know	7.6

agree or disagree some

Age

18-34	50.6	(p=.03)
35-54	52.6	
55+	69.6	

Marital status

married	53.4	(p=.09)
other	65.7	

Religion

fundamentalist	63.5	(p=.04)
other	50.0	

Do you think there should be laws against marriages between blacks and whites?

yes	34.3%
no	60.6
don't know	5.2

yes

Age

18-34	28.0	(p=.003)
35-54	28.8	
55+	50.6	

Education

hs grad or less	40.9	(p=.05)
college	28.8	

Employment status

employed	29.3	(p=.03)
other	43.0	

Religion

fundamentalist	40.9	(p=.09)
other	30.2	

We would like to find out how people feel about integration. For each of the following situations tell me whether you completely accept, somewhat accept, somewhat reject, or completely reject each of these things? (whites only)

Blacks eating in the same restaurant with you

accept completely	82.5%
accept somewhat	13.1
reject somewhat	1.2
reject completely	2.8
don't know	0.4

	Accept Completely	
Age		
18-34	84.3	(p=.005)
35-54	92.3	
55+	73.3	
Education		
hs grad or less	78.6	(p=.03)
college	88.8	
Employment status		
employed	87.5	(p=.05)
other	78.3	

Blacks attending your church

accept completely	77.7%
accept somewhat	12.7
reject somewhat	3.6
reject completely	3.6
don't know	2.4

	Accept Completely	
Age		
18-34	84.1%	(p=.000)
35-54	89.5	
55+	66.7	

Education		
hs grad or less	74.3	(p=.03)
college	86.8	
Employment status		
employed	84.1	(p=.08)
other	75.2	
Political party		
Democrat	68.7	(p=.007)
Republican	86.0	
Independent	89.4	

Blacks working side by side with you in the same kind of job

accept completely	87.6%
accept somewhat	10.0
reject somewhat	0.8
reject completely	1.2
don't know	0.4

	Accept Completely	
Marital status		
married	90.0%	(p=.04)
other	81.7	
How often watch TV news		
0-2 a week	79.2	(p=.09)
2-6 a week	90.2	
7 a week	90.6	

Blacks living next door to you

accept completely	62.5%
accept somewhat	16.3
reject somewhat	8.4
reject completely	10.4
don't know	2.4

	Accept Completely	
Age		
18-34	67.1%	(p=.05)
35-54	71.8	
55+	53.7	
Marrital status		
married	68.4	(p=.05)
other	54.9	
Political party		
Democrat	59.8	(p=.05)
Republican	60.0	
Independent	79.2	

Having a black as a roommate for your son or daughter at college

accept completely	49.4%
accept somewhat	14.3
reject somewhat	10.0
reject completely	21.5
don't know	4.8

	Accept Completely	
Age		
18-34	63.4%	(p=.000)
35-54	58.9	
55+	34.6	

Employment status

employed	58.2	
other	45.2	(p=.05)

How often go to church

once a week or more	45.5	(p=.06)
once a month or less	57.7	

Now I would like to ask you about a lawsuit concerning some families in Panola County, Texas. The Cornett family claims that immediately after the Civil War their white grandfather and black grandmother married and had twelve children. Local white people working with the Ku Klux Klan killed many blacks in Panola County and forced them off their land. The Cornett family, it is said, had to leave their land late one night in order to avoid being killed. The Cornett family claims that the only reason this land was taken away from them was because Mr. Cornett who was white married a black woman and local whites did not want blacks to own land. Do you think it is likely that the Cornetts were thrown off their land because the Cornetts had a black-white marriage?

yes—interracial marriage	70.7%
no	12.0
don't know	17.3

Yes

Education

hs grad or less	81.3%	(p=.08)
college	90.1	

Employment status

employed	89.7	(p=.06)
other	80.4	

Do you think the Cornett family should be compensated because of what occurred?

yes	45.0%
no	31.3
don't know	23.7

Yes

Registered to vote

yes	51.4%	(p=.08)
no	67.6	

The white people who own the land claim that it is absurd to sue about an event that occurred 100 years ago. Do you agree or disagree that it is absurd to sue about this event because it occurred 100 years ago?

agree, absurd	49.7%
disagree	34.0
don't know	16.3

Absurd

Education

hs grad or less	58.3%	(p=.02)
college	73.7	

Registered to vote

yes	70.2	(p=.003)
no	44.4	

Political party

Democrat	57.1	(p=.01)
Republican	80.4	
Independent	75.6	

Do you think the white people who now own the land should be required to give the land back to the Cornett family?

make them give it back	27.7%
don't give land back	50.3
don't know	22.0

	Give Land Back	
Education		
hs grad or less	35.5%	(p=.001)
college	14.3	
Registered to vote		
yes	21.5	(p=.001)
no	50.0	

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CIVIL ACTION NO. TY-84-442

ESTATE OF ARCHIBALD CORNETT, ET AL,
Plaintiffs,

v.

ESTATE OF M. D. SIKES, ET AL,
Defendants.

AFFIDAVIT OF ROBERT CORNETT

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared ROBERT CORNETT, known to me to be a credible person, competent in all respects to make this affidavit, and who, being by me duly sworn upon his oath, deposed and stated as follows:

"My name is Robert Cornett. I am the family historian for the Archibald Cornett/Sally Williams Cornett family. I am the son of Mongo and Aldonia Gray Cornett. I was born on July 25, 1907 in Logansport, Louisiana. Mongo Cornett was the son of Archibald and Sally Williams Cornett. Therefore, I am the grandson of Archibald and Sally Williams Cornett. Archibald Cornett was born in or around Joplin, Missouri around about the year 1835. Archibald was raised on a farm and he learned all about farming, growing crops, planting crops and

caring for and breeding livestock. According to his reputation in Texas and Louisiana, Archibald was a great horseman. He could ride when he was a young man and he was good at training and breaking horses. As a young man, he worked as a carpenter, brick mason, blacksmith, wood carver, and he worked awhile at distilling whiskey. Archibald remained a loyal southerner and joined the Confederate army at the beginning of the Civil War and was in the calvary.

"As Archibald told me, the economics of slavery was the issue in the Civil War. According to Archibald, there were trade differences involving slave labor between the two sections of the country that brought on the war and made the South want to secede the Union. Archibald supported the South and joined the confederacy. Lincoln said that he would free the slaves only to save the Union —many of them, all of them or none of them. The Union was being torn apart by the South's advantage with slave labor and no need for Northern goods and implements. According to Archibald, there were abolitionist on each side of the country, the Mason Dixon Line. According to Archibald, poor Southern whites were abolitionists or should have been, including him, because no poor white man working as a craftsman or anything else did not have much of chance to make a living at something a big man could accomplish with slave labor. America had abolitionist like John Brown who attacked Harper's Ferry with a pole trying to free the slaves. He was hung high and called a terrorist for seeking positive, affirmative action regarding my race's condition as people. There was William Lloyd Garrison, of Boston, who was a great abolitionist and who established a newspaper called The Liberator. He thought that the slaves should be freed,

union or no union and, as a result, was whipped and dragged in the streets of Boston for his stand on slavery. History shows there were others who paid with blood for their belief that color was an improper standard in life. We specifically had Archibald Cornett, my Granddaddy, who turned into a post-war freedom fighter, who did not believe in slavery or different treatment, rules, regulations and laws based on skin color. The Civil War was his "Damascus Road" experience. He told me the war taught him that every man had a right to live life as a free man. The price of freedom was paid in the War.

"It was said of Archibald by his companions in the war, Wes Booten and the McMillans that he was a great shot with a gun. Some of his old comrades said he ranked 2nd to nobody, Jessie James stands alone at that time.

"Jessie James, and all the other out-laws during his time and they said that Archibald was as good a marksman as ever lived. One of the best of all kinds. I can say that as old as he was, when I came along I knew him from the time I knew myself, he could really shoot. He was the best shot that I've ever seen and I saw him shoot at everything. I never saw him shoot at anything sitting, standing, crawling, running or walking that he didn't hit. I saw him kill mice and rates as fast as they can run in the barnyard with a pistol. As a little fellow, I use to watch the stars at night and I admired the old man in the moon. I asked Archibald one time please don't shoot at him because I thought he may kill him. He told me 'ah boy don't worry about that.' If anybody could kill the man in the moon, he could based on his skill with guns.

"At the end of the war, his calvary outfit (I can't identify it by number or whatever) disbanded somewhere out around De Soto Parish, Louisiana and Panola County, Texas. We recently learned that the last or one of the last battles involving Texas and Louisiana Confederates was engaged in at Mansfield, Louisiana. Archibald claimed Lincoln gave all of the confederate soldiers whatever horses and whatever things they had and that was that. Of course, Texas found out two years after the war that it was, in fact, over. Around four years later, the State of Texas gave Archibald the right to settle. Recall that Archibald had taken an ex-slave for his wife, Sally Williams Cornett. He lived with her for 50 years or more and he lived with her through all kinds of trouble and all kinds of problems related to her race and their association. Archibald and Sally got two children born on this land in Panola County, Texas, one girl and one boy. The boy, Mongo, was my daddy. The affidavit of Percy Lee German gives the names and people descending from Archibald and Sally, and no other descendants exist. Further, no one name "Aster" Cornett ever lived in Panola County or De Soto Parish. "Aster" Cornett was a name used by M. D. Sikes to steal my Grandfather's land, and afterwards, Sikes, along with the Sheriff and Panola County violated and the current record owners continue to violate our rights to inherit real property. Title has never been clear to the land sought to be recovered as a remedy for those civil rights violations. Archibald and Sally and their family were constantly nagged and haggled at over in Panola County because Sally, an ex-slave was taken as his wife. He tried to get help from the Sheriff and county officials who intentionally withheld protection due to Sally's race and the Panola County custom of distinguishing who

protection was available to based on the race of the victims and the actors. Archibald stood it as best he could and after several years of farming, trapping and running his ferry boat across Toledo Bend on the Sabine River, this thing came to head and there was a shootout and he had to flee for his family's safety from terrorism from Panola County. The Ku Klux Klan, many of whom were the "officials" of Panola County, including and especially the Sheriff and officials of Lewis Werner Sawmill Company, terrorized and finally ran Archibald and Sally and their family out of the Flatwoods. There are to this day no Negroes living in the Flatwoods due to legal segregation and color based codes, customs, traditions, rules, regulations and laws affecting land ownership. He entered into De Soto Parish, settling between Keatchie and Longstreet Louisiana. Archibald never abandoned the 160 acres of our land. Archibald had problems even in Louisiana with his Negro ex-slave wife. Most white people didn't like it, especially the white people in control of power and local government. He was hated and scorned and held up for ridicule by everybody because of his choice of an ex-slave for a wife. He did not claim Sally as a servant. That's what the other white men did around in Panola County and De Soto Parish. After they had these Negroes wives, they said they were cooks, they said they were maids, they said they were something like that. Archibald, having grown tremendously during the Civil War, truly believed in freedom, and refused to not openly identify with his ex-slave wife and their children.

"He thought that if a man couldn't choose his wife, he was a slave, especially since the war supposedly solved these issues. He didn't think that the government or

anybody else had a right to choose his wife or live his personal and private life for him.

"He decided that he would live his own life, which eventually caused him to escape into De Soto Parish with his family. He wanted to give his ex-slave wife respect and attempted to demand every one else to give her respect. He was called an atheist and agnostic and everything else. He had run-ins with the church because of his ex-slave wife. He did not believe that God wanted Christians to have black and white churches and felt there was no such a thing as a black and white church. The war taught Archibald that God doesn't have anything like that. A being that's powerful enough, wise enough, smart enough to build this magnificient universe and all these things certainly disproved that God would cater to slave masters and such stuff as that. The war taught Archibald that God wouldn't care if a man had big lips, kinky hair or whatever you had, then Archibald he did not care either.

"Around Keatchie at that time you couldn't tell who was suppose to be white and who was suppose to be black, most of those white men were claiming those Negro women as servant and one thing or another and Archibald wouldn't do that. I had problems identifying the people who were suppose to be white and who were suppose to be Black and all that kind of thing. They were teaching me colors. I had no trouble with the colors of dogs and cows and things. If a black dog came to the house today it was a black dog tomorrow. One day a man came over, if he was dark, red, rusty, he was a white man. The next day another man came over blond hair, blue eyes, then he was a black man. I was bothered about that. I wanted to know how I'm ever

going to learn what black and white is. If it holds for dogs and one thing another, why couldn't it hold for people. Archibald said well it don't make sense, slave masters had that as a ploy to try to make slavery an escape route. I remember one time so very well, I was three years or a little bit older, I got a brother that I am three years older than and babies were born at home at that time with midwives. My mother was in bed with this kid. I guess the baby was a week old or something. Two men came by hunting quail on the place in October, quail hunting season, and he bought them back to look at his little grandson. He was proud of his grandchildren, proud of his children. He brought them in to look at the baby. They looked at the baby, got on their beautiful horses and rode away. He stayed on the porch to play with me. I went on admiring the beautiful horses the two white men were riding and he told me to my surprise, he says, one of those men is a Black man. They are not both white men. Well I couldn't figure that. I said who is the Black man. The one who had blue eyes was the black man. The red, rusty one was the white man. He said well boy don't worry about it, you would have to know these people personally to know these things. He said the white man has the deck loaded and, its loaded in his favor, so don't worry about it. It took a war but the white majority in Texas continued business as usual and my race and family contined and continue to be stigmatized because of our color. Archibald told me not to worry about going to these eating places when you get up, he said don't go in them. Have some respect for yourself if no body else has any. The white man will kill you for trying to be free like them. He said don't go here, don't go there, stay away from this and stay away from that. All the while everything related to Momma Sally and

our color and Archibald's association with us. He had a lot of things we should do for our own safety and based on the color codes of Panola County and DeSoto Parish. I had to learn these things to pass on to our people merely for survival. It was unlike the rules of life for the white people. So that's the way Archibald felt about how we would survive the violence of the white man. On or about April 1, 1986, Lena Horne stated in a newspaper article that it has taken her entire 68 years to deal with the color of her skn and the attitudes of whites based on her skin. The does and don'ts of living the Negro life. Likewise, it has taken all 78 years of my life to discover the truth of what happened to my family and people and to survive to find out. I told a fellow that, I said, 'I rate Archibald right along with Lincoln and other great leaders.' You may ask, how can you rate him with Lincoln. Well, Lincoln got to be the President, and my Granddaddy did not. Archibald was honest, fair and more straight forward than Lincoln. He wasn't a politician, he was to straight to be a politician. If Lincoln would have taken him a black woman at arm and right on the platform when he was running for office and said that if you, my fellow Americans, if you would elect me President, here stand his ex-slave wife, then he couldn't be elected dog catcher. I said even if John Brown, had himself a black wife, he probably would have had to attack Harpers Ferry single handed—probably couldn't have gotten a gang to think about going with him. The feeling against my race was and is so strong and every fair minded individual reading my thoughts knows this is true and history backs me up. President Lincoln said that he didn't feel that Negroes were equal to whites, he felt they were inferior. If I would see a man out there beating and kicking a dog

around I know that dog is not a human but its a way to treat that dog. And that is what Lincoln said. He said that even though they were inferior to white man it was a way to treat them and slavery wasn't the way to treat them. He thought they ought to be freed and sent out on a island somewhere. He thought that the country should buy a island and move them out so they would be able, just only to compete with themselves and not with the white folks. He felt as though Negroes were incapable of competing with the white man. He didn't think they could do that. He said he was not trying to make voters out of them, lawyers, or doctors or anything. Lincoln, the president, was against interracial marriage and all that kind of thing. And that's what the President, Lincoln said and the rest of the white race felt and acted out except Archibald and a few of his kind. He felt that Negroes, Mexicans, Indians and everybody could achieve given a equal chance. That's the way he felt about it. We don't know how the other abolitionist felt. After the war, Archibald took a stand. He took a stand against the churches, took a stand against everybody else who used color for bad. Archibald was against anyone against Negroes being free. He couldn't believe the church had a right to sanction slavery, prohibit interracial racial marriage or anything like that. Archibald didn't care who felt that way about it, he didn't feel that way. When old man Archibald was too old and health was down in De Soto Parish, Louisiana, the white people over in Panola heard about it. They started making threats on his life. Again, Archibald was in flight, as an old man. He left his land and went on about 2 miles off in the bottom of a little shack and in seclusion in hiding from these people. He dropped off into a coma after being over there for awhile and he

died in October, 1915. He died and he was buried in Keatchie, Louisiana in the Confederate Memorial Cemetary.

"After his death, the white people at once taken all of the Louisiana property away from us. Where the sawmill was located, all but just a little bit where the house was and all like that. All the timber that wasn't cut. They cut all that magnificent lead gum and all of that stuff, they cut it and shipped it away from there and we lost all of that to those white people, after his death. The property over there in Panola County, we didn't know nor did we have a way of knowing that it was stolen until we filed this suit. We say stolen, sold here and there, we didn't know that, we didn't know until we got this suit filed. We started going there trying to investigate Archibald's allegations that we had this land in Panola and that we were told about it by both Mama Sally and Archibald. The Clerk at the Courthouse told us to get out and stay out and that we were not allowed in the Courthouse and were not allowed to investigate the tax or anything else on it. Other than our color, we did not why the white people in the County were so afraid of our inquiries. History taught us that we had better do what white people said. That was a surprise to us way after his death until we discovered the truth. He mentioned a time or two the description of his property over there in Panola County. It was laden with that beautiful redwood and he intended to build a family mill over there to cut that heavy hardwood over there. He would always say if he lived long enough to see it get better for us that he would hope to run a railroad over there, and haul that big hardwood over there and cut it with the hardwood sawmill he had planned to build. And if not, he felt then things would develop so we could have

it and that it would go to the family. We would inherit it if he didn't live long enough to cut that timber over there. But he did intend to have that timber cut over there in Panola County and hauled. So we would inherit that property, that was his thought and expression and he prayed that one day the white people in Panola County would let us be free to inherit and possess it.

"The Cornett family has been deprived of their liberty and property by the Defendants and we have no remedy under state law. There has never been a willingness to do the right thing as far as the County of Panola is concerned and the State of Texas has no laws, rules or regulations that we have been able to find that would allow us to vindicate our family's civil rights and to inherit our land from Archibald and Sally Williams Cornett. The County of Panola, through its policies, customs, rules and regulations, intentionally did not afford my grandparents the same protection from the Ku Klux Klan and other hate groups and individuals seeking to violate their civil rights. The County and its white citizens, generally, intentionally perpetrated acts of violence and terrorism against my grandparents with the intended view of running them out and keeping the present heirs from inheriting our forefathers' real property. The present record owners of the Archibald Cornett Survey intentionally participated in covering up the wrong that had and continues to actively participate in covering up this wrong. We have and have had through the years no adequate remedy at law.

"Unless this Federal Court enjoins the County and the current record owners from enforcing the latters record ownership, those record owners will continue to occupy, use, lease, sell and otherwise enjoy our inheritance to our exclusion and we will suffer irreparable harm. The stigma

of not being able to inherit or own land and due to Sally's race and marriage to Archibald will forever exist on my family unless this Federal Court exercises its power to ignore state laws that act as a bar to the relied we are seeking and that are, in my mind, inconsistent with federal policy underlying the civil rights laws and federal law on due process, equal protection and the First Amendment. Our civil rights lawsuit was not known or reasonably knowable by us and the Panola County Clerk's office and the taxing authority's and Deed Records Department have intentionally prevented us from knowing of our lawsuit. The Sheriff's Department enforced the racially biased laws and customs and continue to enforce them against us. The oil companies that have used our resources from the land knew about the civil rights violations and the master fraud and terrorism and participated in the cover-up not thinking we would find out; and thinking that if we did find out, the Statute of Limitations on every possible action would have run on us."

"FURTHER, Affiant sayeth not."

/s/ ROBERT CORNETT
Robert Cornett - Affiant

SWORN TO AND SUBSCRIBED before me by the affiant, ROBERT CORNETT, the undersigned authority and given under my official hand and seal, this the 12th day of August, 1986.

/s/ JOHN S. THOMAS
Notary Public in and for
State of Texas
My commission expires:
12-16-1988

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CIVIL ACTION NO. TY-84-442

ESTATE OF ARCHIBALD CORNETT, ET AL.,
Plaintiffs,

v.

ESTATE OF M. D. SIKES, ET AL.,
Defendants.

AFFIDAVIT OF LEON "BUDDY" BARNES

THE STATE OF LOUISIANA §
§
PARISH OF DE SOTO §

BEFORE ME, the undersigned authority, on this day personally appeared LEON "BUDDY" BARNES, who, being by me duly sworn, deposed and said:

"My name is Leon "Buddy" Barnes and I live in and around Keachie, DeSoto Parish, Louisiana. I am over 21 years of age having been born in 1894, of sound mind not being judge crazy in 92 years, and capable of making this affidavit because I am and personally acquainted with the facts in this statement, having lived with and knowed the people and times mentioned:

"My father's name was Charlie Barnes and my mother was Eliza Barnes. I had a colored grandfather and a white grandfather. Wade Hampton was my colored grandfather, my mother's father, and William Barnes was my white grandfather, my dad's father who was also called "Bill"

Barnes. Bill Barnes was married to Eva Pitman who was colored. That's the reason that we are stirred up with the Pitmans. By that I mean our grandmother was a Pitman on the colored side before she got with Bill Barnes, you understand. And when she got with Bill Barnes, I don't know about the marriage. Now I know they lived and raised children until he died. Now for me to say they were married, I couldn't say that. I call that a common law and common law works just the same. She was a Pitman and he got her for an old lady. I don't know whether he married her or not. But he was a white man and lived with her and stayed with her until he died. I ain't never seen them record a license and I ain't never known. But I know he was my grandfather. They buried him up in Keatchie. His tombstone is there right now, in there with the white folks. But he had a colored woman when he died. He wasn't the only one around these parts with a colored woman. No Sir, Bone was Cornett's friend and Booten was a white man and was the grandfather to Roy McMillian and them because they were nearly white themselves. Archibald Cornett, what ya'll are talking about had a colored woman. Her name was Sally. We always called her Sally Williams, going by the old law. We didn't know if they were married or not because I was little in them days. I called her Aunt Sally but I was not related to her real directly. He died married to a colored woman, Sally Williams. He lived with that colored woman and raised all those children.

"I don't know whether my grandfather was married to my grandmother under the old law or not. I heard that. For me to swear to that, I couldn't swear to it. I can't explain the law because I don't know the law in exactly them days, I couldn't explain that but I feel that I'm legal of being a Barnes. Well, I know I'm legal to my mother.

I base my opinion that I am a Barnes on the fact that I have Barnes blood because Charlie Barnes is my daddy, cause he raised me and married my mother. Bill Barnes talked about who his family was and that was what Charlie Barnes, my daddy, told me a number of times. That was my grandfather, Old Bill Barnes. Old Bill Barnes was Charlie Barnes' daddy and Charlie Barnes is my daddy. Bill Barnes acted like my grandfather. I was too when he died, I was a little old boy. You know how I was. I didn't know nothing but that he was my granddaddy. I never did remember going to his house and he died when I did go up there to my grandma. Now she lived a long time after that in the same place and house where he died.

"My dad was colored but a white man was his daddy. The white men lived with colored women because my mother had a sister who had a white man and raised children. My mother's sister. I keep saying raised children because I never did see no license and I didn't know the white man could marry a colored woman here. It was some big deal for a white man to marry a colored woman way back yonder when they were doing it. Colored man couldn't mess with no white woman, I know that. No, they can't do that yet and its the law, they done changed the law, now is I right or wrong. I am going by what I think. I can't say what I know, I couldn't sign and swear to it. Now if somebody don't tell me I'm right or tell me I'm wrong I don't know anything, ain't that right. But now anything that's justified an application could prove out what it is. All I have to go on is what my father and mother told me.

"Now Archibald Cornett had a good reputation to have a colored woman here. He treated people just like he was

colored and he tried to help anybody that needed help. Old man Cornett did. Old man Barnes did too, you see. Didn't have court. It wasn't like it is now. Wait till Bill Barnes get her and they take Old Bill Barnes' advice. I knowed old man Cornett to go over there and treat me just like if I was white, when I was a little boy. He talked about cattlemen and horses and all sorts of things. If anybody here get sick and didn't have nothing to eat, he would go over there and see about them and tell and you say yeah, "well, come here and get something to eat." He was pretty gruff. Yeah, he would say, "come here and get something to eat, sit down and eat something." He always had plenty to eat, cause they worked for that. Nothing but farmers raising hogs, chickens. You know how those white folks do, they would sort of hussle for their living but they ain't got to do too much. Some of them would work hard. He was an old, good man and Old Bill Barnes and Old Booten was his friend. Old man Cornett, both of them, supposed to have bought some land over here in Keatchie not far apart. Then the Bootens got theirs but somehow, Mr. Cornett came up short. I don't know, then he had to move off but they say he had some land there, what I hear. I couldn't say I see the deeds or nothing. Old man Cornett is buried up there I think in Keatchie, in the Confederate Cemetary for Confederate soldiers with other whites married to colored gals like "Bone" McMillian and "West" Booten who served in the war with old man Cornett. Right side is ours, the colored. Old white folks like Bill Barnes and the one that married my aunt, they buried them there when they died.

"All of Archibald Cornett's daughters, all of his sons, Mongo, Sango, and them. I'm calling them all before they married—June, Jewell. Lot of them I knowed, lot of them

now I don't. You got to bring them up before I could think of them again. They were old man Cornett's children. They had a lot of those interracial marriages around them with white men marrying a black woman and it's here now, because they marrying them here now. I have white blood in me. But I stayed to my section, I didn't take nothing to do with the white woman. I take something to do with the colored woman. I didn't want white woman because I knowed that was wrong. I know when I come up they didn't allow that. Yeah, I reakon it was law, they'd kill you. I know that because I know colored got killed by a white, I know that. I heard about it. I know they buried a colored that got beat up. I remember coloreds being whipped but I can't call places. I know that they say they done it, the white folks. You see, we was just the same as the slaves here. My old parents worked here in slavery time. My old parents, my mother and father.

"And then Bill Barnes was also during slavery and he had to put up with that kind of stuff. He had so many acres of land, right side of this highway, Highway 65. Old Bill Barnes place, they ain't got nothing but cattle on it now, but he lost it. I don't know nothing except that's what they say. Don't have no strict deed, don't have no legal deed, just take it. The law is now is if you got a deed to the land and you ain't signed it away or sold it and if it ever come back up, law people will let you know its your land. That is the law here in Louisiana and Texas too. If you ain't got a deed, you can't sell no land. But they can make out a deal. That's a fraud coming up maybe some day when you're dead and gone and will be explained and they got to hunt them, some of them be dead, but they got to find that application for who it was.

I heard it said that an heir is never out for hundred of years, they never get the heir. He could get out himself.

"In 1964 they passed the civil rights act to me by sending me a notice that said I was legal and had civil rights. President Kennedy started it and President Johnson finished it up. I remember Kennedy based on his good deed, just like I remember Archibald Cornett based on his good deeds.

"I know of instances, particular instances that I recall when black people were treated wrong around here in Keatchie. I can't tell the date but they have been mistreated so much until I just say I could hear it and know what troubles they have been having here. I remember some of it because they had it since I've been here, killing niggers. Shooting them down about anything, about a debt or anything, some of them did. Well some of them were law officers. They would come to Keatchie and the man come in there and if he couldn't pay them, they would tell him what they were going to do and they got to shooting in there and shot the colored man and he died. The "High Sheriff" done nothing. I've heard bad things about Panola County, Texas. I've heard that they do the same thing if you mess with a white woman. I hear that. Now I don't know it because I ain't never done nothing like that and I didn't associate with them. They said it was against the law and, if it was, they passed the law.

"Cornett used to be associated in Texas and he came from back on the other side of the Clear Lake on the other side of Carthage. Different people who knew Archie Cornett said he had land in Texas. My daddy couldn't swim and nearly drowned in that lake. Some white folk, which they say were Cornetts, rescued him. These white

folk supposedly owned part of that land. My uncle had dogs running over on that land. He went over the one time and the folk wouldn't let him come in there. Mr. Cornett helped him get in cause he was associated and could take care of himself.

"The white men like old man Cornett and my grandfather don't have white wives at the same time as they got colored women. I ain't never heard of nobody doing nothing but living with those colored women and stayed with them like they were married to them. Mrs. Sally was the best in the country. She was just the same here as anybody else, even if she was living with a white man. She was regular. She would help anybody that needed it. People sometime just on soup lines mostly. White people here in Keatchie and around Texas, Long Street, Panola County, white people did terrorize them. They would do anything they wanted to do with them, kill them, threaten them, beat them. They just cut that law out here not long ago. At least they got it quiet down. If a black woman was raped by a white man, well, some time they would do something and some time they wouldn't. But you rape a white woman and they would hang you. They would have a trial but they beat it. Yes, they got killed for just talking about it. For raping a white woman, I know they died from it.

"The Cornetts are sanctified. They are from the Sanctified Church. Archibald Cornett was a one-woman man. His wife was better to him than the colored was to their own color. I never heard of Archibald married at any time prior to marrying Mrs. Sally. He was known as Sally's old man, that's what they say. Sally was a dark, dark woman. She look like a girl with good hair and a dark

woman with creo hair. I don't know whether Archibald bought her here or how he got her."

Further, Affiant sayeth not.

/s/ LEON BARNES
Leon "Buddy" Barnes - Affiant

SUBSCRIBED AND SWORN TO before me by the above named Affiant this 23rd day of September, 1986, to certify which, witness my hand and seal of office.

/s/ WILBUR T. PURVIS, JR.
Notary Public in and for
The State of Louisiana
My Commission Expires: LIFE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CIVIL ACTION NO. TY-84-442

ESTATE OF ARCHIBALD CORNETT, ET AL,
Plaintiffs,

v.

ESTATE OF M. D. SIKES, ET AL,
Defendants.

AFFIDAVIT OF PERCY LEE GERMAN

THE STATE OF TEXAS §
§
COUNTY OF PANOLA §

BEFORE ME, the undersigned authority, on this day personally appeared PERCY LEE GERMAN, single, woman, over 18 years old, of Harris County, Texas. She has known the Cornett family for 45 years and was married to a member of the family for 25 years. She is known to me to be a credible person and being by me first duly sworn, upon her respective oath depose and say:

That she was personally and well acquainted with the children of ARCHIBALD CORNETT and his wife, SALLY WILLIAMS CORNETT, during their lifetime and with Archibald Cornett's and Sally Williams Cornett's reputations among their children, their children's children and all others, whether hereinafter named or not, concerning Archibald and Sally's personal and/or family

history; that the said ARCHIBALD CORNETT and SALLY WILLIAMS CORNETT lived together as husband and wife until the death of the said ARCHIBALD CORNETT in 1915; that neither of the parties were ever married before they were married to each other; and that the following listed children only were born of said marriage and lived to majority having married, borne sired children as stated and named, such of which are indicated as living or dead; that ARCHIBALD CORNETT was never, by alias or assumed name, known as Aster Cornett; that ARCHIBALD CORNETT had no relatives named Aster Cornett; ARCHIBALD CORNETT never had any other children born to him or adopted by him other that the children named herein.

That the said ARCHIBALD CORNETT departed this life on the 17th day of October, 1915, Keatchie, DeSoto Parish, Louisiana, intestate, leaving his wife, SALLY WILLIAMS CORNETT and their hereinafter named children and descendants as his only surviving heirs at law.

That the said SALLY WILLIAMS CORNETT departed this life on the 31st day of March 1926, at Palestine, Anderson County, Texas, intestate, leaving the following persons as her children and her only surviving heirs at law.

That the affiant was personally acquainted with the children of ARCHIBALD CORNETT and his wife, SALLY WILLIAMS CORNETT, and their children, their children's children and all others hereinafter named, and that no other issue was born of said marriage as so named, and that no children were adopted by them or taken into their home for the purpose of adoption, and

that the said SALLY WILLIAMS CORNETT, did not remarry after the death of her said husband, ARCHIBALD CORNETT.

That the only surviving heirs at law of the said ARCHIBALD CORNETT and his wife, SALLY WILLIAMS CORNETT are as follows:

The first child born to the said ARCHIBALD and SALLY WILLIAMS CORNETT was JULIE CORNETT, who died intestate in 1942 in Troup, Texas. She was married to JIM JACKSON, who was killed by a train in 1906. Henry Payton was JULIE'S son, born out of wedlock. Mr. Payton (deceased) married Carey Payton, who now lives in Tyler, Texas. They had six children, Jime Payton living in Troup, Texas, Betty Payton Johnson living in Troup, Texas, Bailey Payton living in Troup, Texas, Mary Nell Payton living in Tyler, Texas, Henry Payton living in Troup, Texas and Julie Payton Duncan living in Troup, Texas.

The next child born to ARCHIBALD CORNETT and his wife, SALLY WILLIAMS CORNETT was MONGO CORNETT, who died intestate in Logansport, Louisiana in 1955. He married ALDONIA CORNETT, who died intestate Logansport, Louisiana. They had ten (10) children as follows:

Robert Cornett, who lives with his wife Mary Cornett of Harris County, Texas.

Lee A. Cornett and wife Vera of Harris County, Texas.

Alton Cornett and his wife Elmira of Harris County, Texas.

Vernon Cornett and wife Helen of Harris County, Texas.

Willie Cornett and wife Jimmie Lee of Harris County, Texas.

Leola Cornett Bars (divorced) of Harris County, Texas.

Bernice Cornett Washington (widow) lives in Harris County, Texas.

Leona Cornett Portley (widow) lives in Harris County, Texas.

Alvion Cornett, single, who died intestate in Harris County, Texas. He had no children.

Walter Cornett, who died intestate in Houston, Harris County, Texas. He married Levada Cornett who lives in Harris County, Texas. They had four children, Linda Cornett, David Earl Cornett, Audrey Cornett Hines, and Robert Cornett all of Houston, Harris County, Texas. He also had one child born out of wedlock, Laura Mae Allen who lives in Harris County, Texas.

MONGO CORNETT'S first wife, MARY HENDERSON (deceased) bore him no children.

The third child of ARCHIBALD CORNETT and SALLY WILLIAMS CORNETT was BEULAH CORNETT, who died intestate in Houston, Texas, in February, 1952. She was first married to HENRY DAUGHERTY, who died intestate about 1900 in Logstreet, Louisiana. They had one child, Foster Daugherty who died intestate in Palestine, Texas. He married Mary Daugherty (deceased), they had one child, Charles Daugherty who now lives in Palestine, Texas.

After her first husband's death, BEULAH CORNETT married GEORGE WASHINGTON who died in intestate

about 1931 or 1932. They had one child, Viola Washington, who died in Keatchie, Louisiana, in 1924 leaving her husband Foster Morris, who died intestate in Harris County, Texas. They had five (5) children who are as follows:

Georgie B. Morris Airline who married Archie Airline, both of whom are dead, leaving an only child, Etoy Airline who now lives in Harris County, Texas.

Lizzie Morris Smalley who married Milton Smalley and lives in Harris County, Texas.

Precious Morris Moore who married James Moore and lives in San Francisco, California.

Foster Morris, Jr., who lives in Harris County, Texas.

Creola Morris Wise (divorced) who died intestate in Harris County, Texas. They had two children whose names are unknown.

The fourth child of ARCHIBALD and SALLY WILLIAMS CORNETT was DOL CORNETT who died intestate in Harris County, Texas, in 1955. She married twice during her life, first to JOHN HENRY JACKSON, now deceased, by whom she had one child, Kelly Jackson who lives in Pelican, Louisiana. The second time to CHARLIE COLEMAN, who is now deceased. There were no children of this second marriage.

The next child of ARCHIBALD and SALLY WILLIAMS CORNETT was MARY CORNETT who died intestate in Harris County, Texas, in 1955. She was married three times during her life, first to JAKE ELLIS who died intestate in 1901, they had one child Robert Ellis, single, who died intestate in Harris County, Texas; second to

JESSIE HOWARD, who died in 1917, they had one child, Maud, who died intestate in Keatchie, Louisiana in 1923, leaving her husband, Walter Ogilvie (deceased) and four (4) children:

Perry Ogilvie of Harris County, Texas.

Evans Ogilvie who died intestate in Harris County, Texas.

Mandie O. Thomas Wms. who married C. W. Williams of Harris County, Texas.

Walter Ogilvie, Jr. who died intestate in Harris County, Texas, leaving a wife, Maxine Ogilvie (deceased). They had three children:

Patricia Ann Hockley, Clifton O'Gilvie and Larry O'Gilvie who all live in Harris County, Texas.

The third marriage to ISSAC PIPKIN, who died intestate in 1931, and they had six (6) children as follows:

Isabella Pipkin Howard, who died intestate in Harris County, Texas, leaving one child, Melvina Tucker who is married to Catey Tucker and lives in Newark, New Jersey.

T. C. Pipkin lives in Palestine, Texas.

Sallie P. McMillion, widow, who lives in Los Angeles, California.

Beulah Mae Pipkin Curtis who married Smith Curtis, Jr. and lives in Harris County, Texas.

Murphy Pipkin, who died intestate in Chicago, Illinois, leaving two (2) children, Thomas Pipkin of Harris County, Texas, and Ruth Pipkin Yadell of Los Angeles, California.

Irvin Pipkin who died intestate in Harris County, Texas. He was married twice during his life, first to Nora Pipkin who died intestate in Harris County, Texas. They had one child, Isacc Pipkin, Jr., who died intestate in Harris County, Texas, leaving his wife, Eva Pipkin, and seven (7) children: Eva Jean Bonilla, Raymond Pipkin, Michael Pipkin, Gwendolyn Pipkin, Kimberly Pipkin (Minor), Goryle Pipkin, and Kevin Pipkin (Minor) who all live in Houston, Harris County, Texas.

His second marriage was to Hilda Pipkin who lives in Harris County, Texas. They had three (3) children, Donna Pipkin Hurtado, Steve Pipkin and Judy Pipkin who all live in Harris County, Texas.

The next child of ARCHIBALD CORNETT and SALLY WILLIAMS CORNETT is RICHARD CORNETT, who died intestate in Harris County, Texas. He was married twice in his lifetime. First to Viola Cornett, who died intestate in Harris County, Texas. There were (6) children born to this marriage:

Scott Cornett, Single, who died intestate in Harris County, Texas.

Unice Cornett who lives in Los Angeles, California.

Velma Cornett Glaspie who lives in Los Angeles, California.

Ruby Cornett Hall (widow) who lives in Los Angeles, California.

Norris Cornett, divorced, who lives in Midland, Texas.

Willis Cornett, single, who died intestate in Harris County, Texas.

RICHARD'S second wife was OSCAR CORNETT, they had six (6) children:

Jewel Cornett married to Chris Cornett, they live in Houston, Harris County, Texas.

Gates Cornett, single, who lives in Harris County, Texas.

Pete Cornett, single, who died intestate in Harris County, Texas.

Marvis Cornett McMillion (widow) who lives in Keatchie, Louisiana.

Bogus Cornett who lives with his wife, Yvonne, in Los Angeles, California.

Vernice Cornett Thompson who lives in Los Angeles, California.

The next child of ARCHIBALD CORNETT and SALLY WILLIAMS CORNETT is ROSE CORNETT TUCKER who was married to and divorced from GEORGE TUCKER, they both died intestate in DeSoto Parish, Louisiana. They had three (3) children and they are as follows:

Ollie Tucker Hollands (widow) living in Houston, Harris County, Texas.

Blanchard Tucker who lives with his wife Willie in Los Angeles, California.

Newt Tucker, divorced, living in Houston, Harris County, Texas.

The next child of ARCHIBALD CORNETT and SALLY WILLIAMS CORNETT was LUCIE CORNETT

THOMPSON, who died intestate in 1950. She had been married to DANK THOMPSON, who died intestate in 1939 or 1940. They had one child, Willie M. Thompson, who died of T.B. while in the U. S. Navy.

The next child of ARCHIBALD CORNETT and SALLY WILLIAMS CORNETT was JENNIE CORNETT GERMAN, who died intestate in 1968. She had been married to JOE GERMAN, I., who died intestate in 1946. They had five (5) children and are as follows:

Joe German, II., who was married twice. First to Josephine German. They had one child, Roy Gene German who lives in Harris County, Texas, with hs wife Dorothy German.

His second marriage was to Alzadie Perkins German, they had eleven (11) children. They are as follows:

Huey P. German, to whom affiant was married for over 29 years and who lives in Harris County, Texas.

Jenny German Johnson who lives with her husband, Flenoy L. Johnson in San Francisco, California.

Bobbie Joe German Banks who lives with her husband, Walter Banks in San Francisco, California.

Annie M. German Jones who lives with her husband, Lewis Jones in Harris County, Texas.

Helen M. German Robinson, divorced, who lives in Houston, Harris County, Texas.

Shirley J. German, single, who lives in Houston, Harris County, Texas.

Jessie German who lives with his wife Althea Porter German in Harris County, Texas.

Joe German, III., single, who lives in Harris County, Texas.

Tommy German, who married Elaine Miles German. He lives in Houston, Harris County, Texas.

Jimmie German, divorced, who lives in Houston, Harris County, Texas.

There was also one child born to Joe German, II., out of wedlock, Clarissa Hudson, who lives with his wife Anne in Palestine, Texas.

The second child born to JENNY CORNETT GERMAN and JOE GERMAN, I., was Myrtle German Gibson who died intestate in 1968. She was married twice. First to Elwood Barard, one child was adopted into this marriage, Sandra Barard Felder who lives with her husband Larry Felder in Los Angeles, California. The second marriage was to Timothy Gibson who died intestate in 1982 or 1983. There were no children born to this marriage.

Carrie German Armstrong who lives wth her husband Porter Armstrong in Harris County, Texas.

Exie German Porch who died intestate in 1976. She was married twice. First to Lee Otis Thomas, Sr., to this marriage one child was born, Lee Otis Thomas, Jr. who now lives with his wife Betty in San Francisco, Calfornia. The second marriage was to Leamon Porch who now lives in Harris County, Texas. One child was adopted into this marriage, Timothy Porch who now lives in Harris County, Texas.

Rosie German who died intestate in Harris County, Texas. She was married twice. The first marriage was

to Lee Woodward who died intestate in Harris County, Texas. The second marriage was to Frenchie Wallace who died intestate in Harris County, Texas. No children were born to either marriage.

Lillian German Benjamin (widow) who now lives in Harris County, Texas.

The next child of ARCHIBALD CORNETT and SALLY WILLIAMS CORNETT was BOGUS CORNETT who together with one CALEB SURRY was shot and killed during an argument over a baseball game by one BENNIE BENNETT at Four Forks, Texas on the 4th of July, 1931. He was married twice, first to ETHEL DANIEL, now deceased, by whom he had one child, John A. Cornett (widower) who now lives in Houston, Harris County, Texas; second, to RUBY PRICE, who has since remarried and is now RUBY PRICE BLAKEMORE, living at Palestine, Texas, by whom he had three (3) children as follows:

Archie Cornett who died intestate in Los Angeles, California leaving one child, Archie Cornett, Jr., who now lives with his wife Brenda Cornett in Los Angeles, California.

Bernice Cornett Davis who now lives with her husband, in Los Angeles, California.

Sally Mae Cornett Ingram who lives in Los Angeles, California.

The last child born to ARCHIBALD CORNETT and SALLY WILLIAMS CORNETT was SANGO CORNETT who was married to LILLIAN by whom he had three (3) children, all of whom are deceased. SANGO CORNETT died in 1912 and his wife LILLIAN in

1920. One child of SANGO and LILLIAN CORNETT was Vera Cornett who lived to mother a child, Lillian David Burns, who is now married to Estee Burns and lives in Bastrop, Louisiana.

That there was no administration had on either of the estates of ARCHIBALD CORNETT and his wife, SALLY WILLIAMS CORNETT.

/s/ PERCY LEE GERMAN
Percy Lee German

WITNESSED:

/s/ BETTY B. MILLS
Betty B. Mills

/s/ HUEY L. WILSON
Huey Lynette Wilson

/s/ MILDRED ENGLISH
Mildred English

SWORN TO AND SUBSCRIBED before me in their respective capacities, the undersigned authority and given under my official hand and seal, this 1st day of April, 1986.

/s/ JOHNNIE W. SHIELDS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CIVIL ACTION NO. TY-84-442

ESTATE OF ARCHIBALD CORNETT, ET AL.,
Plaintiffs,

v.

ESTATE OF M. D. SIKES, ET AL.,
Defendants.

AFFIDAVIT OF ROBIN GERMAN-CURTIS

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

"My name is ROBIN GERMAN-CURTIS. I am over 18 years of age, not of unsound mind, and competent to make this statement based on our oral and written family history as it relates to the land in Panola County, Texas, and based on my own individual research and my being the grand-daughter of the most recent former Chairperson of the Cornett Investigation Committee and being presently the Chairperson of that Committee since 1984.

"Archibald Cornett was born around 1830, in Joplin, Missouri. He served in the Confederate Army from the State of Missouri, and is buried in the Confederate Memorial Cemetary outside Keatchie, Louisiana under the name of Arthur Cornett.

"Family history as told by the older members who knew Archibald during his life, states that sometime after the war, in approximately 1865 or 1866, he met Sally Williams, an ex-slave (approximately 14 years of age at the time) wondering on a road, and took her as his wife. According to 'Mama Sally,' she and Archibald 'jumped the broom.' Archibald and Sally lived together as man and wife until his death, October 17, 1915, in DeSoto Parish, Louisiana.

Archibald and Sally settled on 160 acres of land, granted to him by the governor of Texas, in Panola County. They homesteaded this land and lived there until fleeing to DeSoto Parish, outside Keatchie, Louisiana, sometime in the 1870s.

"Because of racial oppression and terroristic conditions under which interracial marriages labored and which existed in Panola County, Texas, Archibald and Sally were banished from Panola County and relocated to DeSoto Parish, Louisiana. DeSoto Parish is located on the east side of the Sabine River, opposite from Carthage, Texas. The community in which they relocated was comprised of other interracial families. Prior to their banishment, Archibald operated a ferry on the Sabine River on Toleda Bend. Toleda Bend is approximately 1.7 miles from the Southern half of the 160 acres of land involved in this suit going out 'Yellow Dog Road' or County Road 455.

"Several of Archibald's Civil War veteran comrades had settled in the Keatchie area after the Civil War. They were Wess Booten and Mr. "Bone" McMillian. These men all were married to Black women (who were ex-slaves).

"Before the Civil War, Archibald worked as a carpenter, brick mason, and whisky distiller. Family members contend that he was an excellent swimmer, horseman and musician. The flute, fiddle and guitar were among the many instruments which he played. His favorite sports were wrestling and boxing.

"Jack Johnson, one of the greatest boxers in American history, was one of Archibald's idols. He admired Jack for his stamina, independence and agreed with his ideology that people are people. Archibald thought Jack Johnson was courageous to take up with a white woman like he took up with a Black woman.

"Archibald was liberated by the Civil War, strongly believing that his personal life was just that, 'his.' He also believed that the color of skin, thickness of lips, texture of hair, etc . . . was not important. Often stating that, if he felt this way surely God didn't care about such trivial things.

"Robert 'Squirel' Cornett, the grandson of Archibald and Sally Cornett, son of Mongo Cornett, and one of the oldest living descendants, was eight years of age at Archibald's death. Robert knew Archibald very well and recalls much about his life as conveyed to him by Archibald. He remembers being told throughout his lifetime about a gang of Ku Klux Klan white men who attacked Archibald and Sally because of Momma Sally's race and previous condition of servitude.

"As history goes, Archibald was operating his ferry on the Sabine River while his wife, Sally, sat holding one of their children. A white man got onto the ferry and asked Archibald, "What are you doing with that nigger

gal?" Words were exchanged. Sometime thereafter, a gunfight ensued in which one man was shot and several Blacks and Mexicans located in the area were hung. (Archibald had a reputation of being a good marksman in the Civil War). Late that night, after hearing that the Klan was making ready to ambush Archibald and his family (wife and two children, Mongo and Julie), the Cornetts escaped to an enclave of mixed marriages up around Keatchie, DeSoto Parish, Louisiana.

"After the banishment, Archibald and Sally prospered in DeSoto Parish. Hearing that the railroad was coming through, Archibald again found and staked off heavy timber and farming land. He eventually leased part of his land in DeSoto Parish to the Washburn Sawmill.

"Archibald was an intelligent and literate man. He could read and write, and did so independently until his later years. On several occasions, he had made known to his children and grand-children the amount of land owned by him and his wife, and how he was banished from that land based on his marriage to 'Mama Sally.' The land which he spoke of was 160 acres in Panola County and 999 acres in DeSoto Parish.

"To the union of Archibald and Sally Cornett were born eleven children. They were "Deal" or "Dol", Mongo, Sango, Richard, Julie, Jenny, Bogus, Rosie, Mary, Lucy, and Beulah Cornett. All are deceased but survived by children or grand-children, or great grand-children, etc., Plaintiffs in this case.

"The heirs and/or descendents of Archibald and Sally Cornett, have established the "Archibald and Sally Williams Cornett Historical Foundation," which foundation

dedicated to preserving the geneological and ancestral history of Archibald and Sally Cornett.

"The following is a list of some of the incidences which, according to our ancestral history, occurred after the death of Archibald Cornett. The exact dates have not been determined, but general and specific time frames have been determined from the years of resarch and cumulative inquiry about what happned to the 160 acres.

"After the death of Archibald Cornett, the white undertaker came and took his body for funeralizing. The family requested that he be buried in the family cemetary, but their request was denied. They were told that he would have to be buried in the white cemetary because white people could not be buried in a black cemetary. Therefore, he was buried in the Confederate Memorial Cemetary in DeSoto Parish, Louisiana. No one can recall if the family was allowed to view his body or attend the funeral services. The family was made to stand outside the cemetary along the road and watch as he was buried under the name of "Arthur" Cornett. This clearly was not his name and was just another indication of a racially dual system's attempt to disassociate us from Archibald and all that was his.

"In recording his death, none of the family members were allowed to give the information pertaining to his personal life, such as birth date, mother and father's name, age, marital status, etc. Therefore, the death certificate is not complete or substantially correct.

"After his burial, the family members never returned to his grave because they were fearful of the authorities. In July of 1984, the grave was visited by several of his

descendants. The approximate location of the grave was known because several of his friends that were also white, were buried beside him. These two individuals were also married to black women. The grave was found but, again, the grave marker bore the name "Arthur" Cornett. Born September 12, 1830 (approximate date), died October 17, 1915.

"A few years after his death, Mongo Cornett, Archibald's son, attempted to pay the taxes on the land in Panola County at the County Courthouse. He was greeted by a courthouse official who reportedly stated that he could not enter the building and was to leave the steps as soon as possible. The statement made was "Nigger, you'd better get away from here". A few years later, he again tried to pay the taxes and was told by a "woman at the tax office" that they had been ordered to burn all tax records from 1929, back. I note that M. D. Sikes' daughter might have been this lady based on his affidavit stating she monitored the taxes on the land. At least a reasonable inference can be drawn that she was the lady that made the statement about burning records.

"In the early 1950's members of the family visited the County Courthouse in Carthage, Texas to investigate county records relative to the 160 acres and were not allowed to see them or to even enter the public areas in the Tax and Deed Records offices.

"An attorney (Black) was then hired. He went to the Carthage Courthouse and was not allowed in to view the records either. He returned and stated that the family would have to hire a white attorney because 'no Black man was going to get anything out of them.'

"William O'Conners' law firm, in Houston, was hired. They told my family the only course of action since Archibald and/or Sally never signed conveyances for the 160 acres in Panola County was to list all the heirs in an affidavit and hope that the County would allow it to be filed. That firm was able to file an Affidavit of Heirship, which was never contested, and a Power of Attorney.

"In approximately 1962, Philander Neeville, an attorney from Chicago, Illinois, working in conjunction with another Texas attorney, was employed to continue investigating the matter. He called and stated that he was scheduled to go to Panola County in approximately two weeks. He also said to my grandmother, Jenny Cornett German, the family power of attorney at that time, that after this case he would never have to work again. On the morning he was to have arrived, Mrs. German received another call, this time from Mr. Neeville's wife. She contended that he had been found dead in his office and would not be able to help us. Later, that same week, Mrs. German received another call from a white man, who would not disclose his identify, who told her that if the family did not leave the land in Panola County alone, none of the family would ever live to see or enjoy it. These are the threats experienced by Archibald his exile from Panola County.

"Throughout the 1960s, the family continued to seek legal assistance in this matter but each attorney who agreed to take the case shortly thereafter became disillusioned due to the time lapse and returned the documents associated with the case. None of the lawyers ever advised us of civil rights violations and/or fraud.

"More recently the family, in April of 1984, consulted with an attorney in Houston in reference to the matter. He reviewed the documents which the family had gathered through its continuous investigation and contended that in 1959 after the filing of the Affidavit of Heirship the money from royalties were placed into an escrow account. Later he concluded that, *due to adverse possession* of the land and the lapse, the family had *lost* any chance of regaining or claiming an interest to it.

"Further, Affiant sayeth not."

/s/ ROBIN GERMAN-CURTIS
Robin German-Curtis

SUBSCRIBED AND SWORN TO BEFORE ME on the 7th day of October, 1986, to certify which witness my hand and official seal.

/s/ Signature Illegible
Notary Public in and for
The State of Texas
My Commission Expires:

APPENDIX H

UNITED STATES CONSTITUTION

AMENDMENT I—FREEDOM OF RELIGION, SPEECH AND PRESS; PEACEFUL ASSEMBLAGE; PETITION OF GRIEVANCES

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

UNITED STATES CODE ANNOTATED

§ 1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

R.S. § 1977.

§ 1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

R.S. § 1978.

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.

§ 1985. Conspiracy to interfere with civil rights

* * *

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

R.S. § 1980.

§ 1986. Action for neglect to prevent

Every person, who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

R.S. § 1981.

§ 1988. Proceedings in vindication of civil rights; attorney's fees.

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

R.S. § 722; Pub.L. 94-559, § 2, Oct. 19, 1976, 90 Stat. 2641; Pub.L. 96-481, Title II, § 205(c), Oct. 21, 1980, 94 Stat. 2330.

Supreme Court, U.S.
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No. 88-1312

In The

Supreme Court of the United States

October Term, 1988

ESTATE OF ARCHIBALD CORNETT, ET AL,

Petitioners,

vs.

ESTATE OF M. D. SIKES, ET AL,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI BY TEXACO OIL COMPANY

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Respondents.

CERTIFICATE

The undersigned, counsel of record for respondent, Texaco Oil Company, certifies that the following listed parties have an interest in the outcome of this case. These representations are made in order that judges of this court may evaluate possible disqualification or recusal pursuant to Rule 21.1(b), *Rules of the Supreme Court of the United States.*

1. Estate of Archibald Cornett.
2. Estate of Sally Williams Cornett.
3. Jenny Cornett-German.

4. Lillian German-Benjamín.
5. Carrie Armstrong.
6. Huey German.
7. Jesse E. German.
8. Annie M. Jones.
9. Shirley J. German.
10. Michael German.
11. Joe German.
12. Tommie German.
13. Jennie L. Johnson.
14. Bobbie J. Banks.
15. Roy J. German.
16. Le Otis Thomas.
17. Sandra Felder.
18. Clarissa Hudson.
19. Kelly Jackson, Sr.
20. Beulah M. Curtis.
21. Gwendolyn Pipkin.
22. Kimberly Pipkin.
23. Donna Pipkin.
24. Eva Jean Pipkin.
25. Sallie McMillons.
26. Raymond Pipkin.
27. Judy Pipkin.
28. Steve Pipkin.
29. Eva Pipkin.
30. Hilda Pipkin.
31. Mandy O'Gilvie Williams.
32. Thomas Pipkin.
33. Melvina Tucker.
34. Ruth Pipkin Yadell.
35. Jim Payton.
36. Julie Payton Duncan.
37. Betty Payton.
38. Bailey Payton.
39. Mary Nell Payton.
40. Alton Cornett.
41. Willie Cornett.
42. Vernon Cornett.
43. Bernice Washington.

44. Lee A. Cornett.
45. Robert Cornett.
46. Leona Portley.
47. Leola Cornett Bars.
48. John A. Cornett.
49. Bernice Jones.
50. Archie Cornett.
51. Sallie Mae Cornett.
52. Gates Cornett.
53. Jewel Cornett.
54. Marvis McMillons.
55. Vernice Thomas.
56. Bogus Cornett.
57. Velma Cornett Grasple.
58. Ruby Cornett Hall.
59. Charles Daughtery.
60. Ollie Tucker Hollins.
61. Newt Tucker.
62. Blanchard Tucker.
63. Linda Cornett.
64. Levada Cornett.
65. Robert Louis Cornett.
66. David Earl Cornett.
67. Audrey Cornett Hines.
68. Ada Cornett.
69. Laura Mae Allen.
70. Perry O'Gilvie.
71. Estate of M. D. Sikes.
72. Claude (HC) Foshee.
73. Ann Lewis Rives.
74. Louis Werner Saw Mill Co., its successors and assigns.
75. County of Panola, Texas.
76. "Texaco Oil Company", the name under which the present respondent was sued.[1]

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[1] The actual owner of the properties in question is Texaco Producing, Inc. That corporation is a subsidiary of Texaco, Inc. Subsidiaries of Texaco, Inc., and Texaco Producing, Inc., are shown in Appendix B.

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Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI BY TEXACO OIL COMPANY

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Texaco Oil Company, a defendant in the trial court, responds, as follows, to a petition for writ of certiorari in a civil rights case that was disposed of by summary judgment by reason of bar by the appropriate statute of limitations:

STATEMENT OF THE CASE

The unreported opinion of the United States Court of Appeals for the Fifth Circuit contains a statement of the proceedings and disposition below. It is correct.

The seven-page "Statement Of The Case" in the petition (Petition 3-9) contains no references to the record. See Rule 34.1(g), *Rules of the Supreme Court of the United States*. By and large, that statement depends upon the "allegations" in petitioner's complaint. It does not deal with or respond to the "facts" in the summary judgment record upon which the case was decided by both courts below.

The forthcoming argument is predicated specifically upon "facts" in the summary judgment record, predominantly "admissions" by petitioners in the trial court.[1]

SUMMARY OF ARGUMENT

In support of the judgments below, Texaco will argue:

1. Under the rule of *Burnett v. Grattan*, 104 S.Ct. 2924, 468 U.S. 42, 47, 82 L.Ed.2d 36, 43 (1984), we look to the common law of Texas for the applicable statute of limitations.

2. Since the civil rights acts redress injuries in the nature of "torts", the most appropriate Texas statute of limitations is its two-year statute for bringing personal injury suits, although the summary judgment record would satisfy the Texas four-year statute as well.

---

[1] "R" references are to the official record filed in the court of appeals. Rule 34.1(g), *Rules of the Supreme Court of the United States*.

3. The appropriate accrual date is the time when petitioners had knowledge of the injury sought to be redressed in this suit.

4. The summary judgment establishes conclusively the following:

(a) Petitioners hired an attorney in 1959 to reclaim the property for them. They were thus aware of their lack of title at that time.

(b) Petitioners' attorney confessed, in written representations, that the heirs' claim to title was rooted in fraud practiced upon them by reason of their race. Thus, they were aware at this time, also, of the civil rights nature of their injury.

(c) In response to interrogatories, petitioners conceded that, no later than 1974, they knew they were being victimized by purported conduct of government officials of Panola County which, if true, ostensibly had petitioners' race as its motivation and thus was facially illegal. If this conduct had any deterrent effect that prevented the filing of this suit, that effect ceased, according to petitioners' own discovery admissions, no later than December 31, 1973.

(d) Ergo, as early as January 1, 1974, the heirs had knowledge of a title defect, knowledge of racial discrimination against them, and an unfettered right to bring the present suit. Their delay of more than ten years conclusively invokes the bar of the appropriate Texas statute of limitations.

PROLOGUE

Texaco is one of several respondents. So far as Texaco can determine, it has been joined in this suit because it has a minor, essentially dormant leasehold interest in real property that would be affected if the district court had granted full relief prayed for by petitioners. (See R. 142.) Texaco can locate only a single, generic reference in the petition to the cause of action against any non-governmental parties.[2]

Petitioners have not cited any summary judgment evidence, and Texaco is aware of no evidence, that it participated in any of the conduct by which petitioners claim deprivation of personal, property, or civil rights.

REASONS WHY THE WRIT SHOULD BE DENIED

Judgment has been rendered by reason of bar by the statute of limitations applicable to the federal statutes under which the action was brought – 42 *U.S.C.*, §§ 1981-1983, §§ 1985-1986, and § 1988. (R. 203, et seq.) Elements that determine proper application of the statute of limitations are: (i) the appropriate statute, (ii) the accrual date, and (iii) facts which commenced the statute. We discuss each of those as follows:

---

[2] "Petitioners specifically alleged race, interracial association and previous condition of servitude to be at the core of this civil action and as the affirmative links to all unconstitutional actions and inactions intentionally directed at Petitioners . . . relative to private citizens' actions as far as individual, non-governmental Respondents and their predecessors in title, interest or office are concerned." (Petition 4-5.)

1.

The governing statute of limitations is borrowed from Texas law.

The civil rights acts under which petitioners sue " * * * do not contain a specific statute of limitations * * * . " *Wilson v. Garcia*, 105 S.Ct. 1938, 471 U.S. 261, 266, 85 L.Ed.2d 254, 260 (1985). The applicable statute of limitations, thus, is determined by the " * * * three-step process * * * " mandated by 42 *U.S.C.*, § 1988, for the purpose of " * * * borrow(ing) an appropriate rule * * * " from a pertinent corpus of statutory law. *Burnett v. Grattan*, 104 S.Ct. 2924, 468 U.S. 42, 48, 82 L.Ed.2d 36, 43 (1984). That process is described thus in *Burnett*, supra:

> " * * * First, courts are to look to the laws of the United States 'so far as such laws are suitable to carry [the civil and criminal civil rights statutes] into effect.' Ibid. If no suitable federal rule exists, the courts undertake the second step by considering application of state 'common law, as modified and changed by the constitution and statutes' of the forum State. Ibid. A third step asserts the predominance of the federal interest: Courts are to apply state law only if it is not 'inconsistent with the Constitution and laws of United States.' * * * " (468 U.S. 47-48, 82 L.Ed.2d 43.)

This court has recognized that, as a general rule, Congress intends, when federal statutes are silent on the issue of limitations, the appropriate " * * * statutes of limitations are to be borrowed from state law. * * * " *Reed v. United Transportation Union*, 109 S.Ct. 621, 57 U.S.L.W. 4088 (1989). This is true of actions under the civil rights acts. *Burnett v. Grattan*, supra.

The case of *Wilson v. Garcia*, supra, holds that civil rights actions, like the present, " * * * are best characterized as personal injury actions * * * ". (471 U.S. 280, 85 L.Ed.2d 269.) The reason why was stated thus:

> "The atrocities that concerned Congress in 1871 plainly sounded in tort. Relying on the premise we have found tort analogies compelling in establishing the elements of a cause of action under § 1983 . . . and in identifying the immunities available to defendants * * * . * * * As we have noted, however, the § 1983 remedy encompasses a broad range of potential tort analogies, from injuries to property to infringements of individual liberty."

> "Among the potential analogies, Congress unquestionably would have considered the remedies established in the Civil Rights Act to be more analogous to tort claims for personal injury than, for example, to claims for damages to property or breach of contract. * * * " (471 U.S. 277, 85 L.Ed.2d 267.)

Substantial federal authority has determined that a two-year statute of limitations is neither inimical to the purposes of, nor an inhibition upon, the rights secured by the Civil Rights Acts. (42 *U.S.C.*, § 1981, et seq.) As to such federal court actions brought within the territorial limits of Texas, it has been determined that Texas' two-year statute of limitations for bringing personal injury suits is the " * * * most appropriate * * * " statute. See: *Peter Henderson Oil Co. v. City of Port Arthur, Texas*, 806 F.2d 1273 (5th Cir. 1987); *Longoria v. City of Bay City, Texas*, 779 F.2d 1136, 1137 (5th Cir. 1986), both of which involved a civil rights claim rooted in the deprivation of real property rights, just as does our case.

Texaco does not understand petitioners to dispute applicability of Texas' two-year statute. It notes, parenthetically, however, that Texas has only two general limitations periods – a two-year period and a four-year period. See § § 16.003-16.004, *Tex. Civ. Prac. & Rem. Code.* (Appendix A.) Texaco will demonstrate in the following argument that petitioners' suit was barred under either statute.

2.

This action accrued when petitioners knew, or had reason to know, of the injury for which they sue.

Though a state statute may determine the applicable limitations period, the accrual of the limitations period is a question of federal law. *Longoria v. City of Bay City, Texas*, 779 F.2d 1136, 1138 (5th Cir. 1986). That case aptly states the test for determining the "accrual" date, to wit:

> " * * * The federal standard used to determine the accrual of a section 1983 cause of action is that the cause of action accrues when the plaintiff knows or has reason to know of the *injury* which is the basis of the action. * * * " (779 F.2d 1138, emphasis added.)

As with the previous element, Texaco does not understand petitioners to contest this rule. We thus turn to application of the preceding rules to the summary judgment record:

3.

Petitioners' action fully accrued prior to 1974.

The summary judgment record establishes conclusively that petitioners' cause of action had accrued, and the applicable limitations period had begun to run, by January 1, 1974.[3] This is ascertainable from answers to requests for admissions and responses to interrogatories, in which petitioners confessed the following facts:

(i) As early as 1959 " * * * all the heirs of Archibald Cornett * * * ", i.e., the present petitioners (R. 1214, 1237), hired attorney William Conners of Houston, Texas, " * * * to assert a claim of title to said land * * * ". (R. 1214.) Thus, at that time, petitioners knew conclusively title was not vested in the Cornett estate.

(ii) An August 4, 1959, letter from Mr. Conners is confessed to be "true" (R. 1238) in the following particulars:

> "My clients are all the heirs of Archibald Cornett, and as such they assert a claim of title to said land, including the mineral fee."

---

[3] In advancing that contention, Texaco gives petitioners the benefit of every doubt and eschews the compelling argument that petitioners' pleadings, themselves, establish accrual as early as 1915.

For example, petitioners' allegations that " * * * the Cornetts [petitioners' predecessors in title] were driven out of Panola County, Texas by a legitimized terroristic force known as the Ku Klux Klan * * * " (R. 208) is virtually a concession that their predecessors in action had knowledge of the present civil rights injury at least by the time of Archibald Cornett's death in 1915. (R. 206.)

> "The record reflects a chain of title out of one Sikes and the Werner Sawmill Company. Sikes' claim is founded upon a deed from 'Aster' Cornett, dated October 1, 1902."
>
> * * * * *
>
> "The deeper I dig into the facts of this investigation the stronger my case appears. My clients *being colored*, there appears certain disturbing elements of a *conspiracy to defraud.*" (R. 1214, emphasis added.)

Those admitted facts establish conclusively not only knowledge of a title claim, but that a basis for petitioners' "injury" was a " * * * conspiracy to defraud * * * " (R. 1214) rooted in their race – the same allegations made here.

(iii) Later, in October of 1961, the heirs conveyed a 1/4th interest in the disputed property, and also gave power of attorney, to a Philander Neville, an Illinois attorney, to help them establish " * * * our rights to * * * " (R. 1221) and to " * * * reclaim the subject property. * * * " (R. 1244.) The heirs admit that, at that time, they " * * * knew that a problem existed with respect to the chain of title. * * * " (R. 1245.) Petitioners also admittedly knew at that time that someone other than a descendant of Archibald Cornett was claiming to own the property. (R. 1246.)

(iv) Prior to January of 1982, petitioners admittedly knew of the deed from "Aster" Cornett to M. D. Sikes, which is the instrument inimical to their claim of title. (R. 1239.)

(v) Lastly, the petitioners confessed that, before 1973, their attempts to examine the title documents pertaining to the original Cornett land grant were being met with

illegal conduct and threats of violence that had seeming racial motivation, to wit:

> " * * * plaintiffs were physically barred up to and including approximately 1973. Plaintiffs had to get *someone white* to inquire for them. Prior to 1971, family members on several occasions attempted to obtain information from the Deed Records in Panola County but were told either 'none existed for Archibald Cornett' or they were told to 'leave the premises and warned not to return or they would be met with bodily harm, *Negroes could not investigate themselves in the deed and tax records.*"
>
> "Subsequent to 1972, one family member, Ervin Pipkins (deceased) and a friend went to Panola County to research the records. They were told by the clerk attending the counter that they could not view the records. They were then instructed by another courthouse official to leave the courthouse or they would be met with physical harm and the high sheriff would get them." (R. 1242-1244, emphasis added.)

In sum, petitioners' admissions on the summary judgment record conclusively visit them with knowledge, no later than January 1, 1974, of the following:

(i) that another party was claiming the land they believed legitimately should have passed to them,

(ii) that the adverse title claim, according to their view, was false,

(iii) that the adverse title had been established or concealed through a conspiracy to defraud promulgated by reason of the heirs' race, and

(iv) that facially illegal, discriminatory conduct, rooted primarily in race, had been practiced upon them

by officials of Panola County in their attempt to research the status of the original Cornett land grant.

Petitioners' claim encompasses the following injuries: (i) loss of title through fraud or other illegal activity practiced because of the race of petitioners or their predecessors and (ii) denial of the petitioners'/heirs' rights, as equal citizens, to examine or otherwise have access to history of the title. Yet, the summary judgment record establishes conclusively that the Cornett heirs (the present petitioners) were fully aware at least ten years before filing the present action of each "injury" they claim to have suffered by violation of 42 *U.S.C.*, § 1981, et seq. Compare: *Cross v. Lucius*, 713 F.2d 153 (5th Cir. 1983).

4.

The summary judgment record renders ineffective any claim that the Texas statute was "tolled".

Petitioners' vague inference that the Texas limitation statute was "tolled" by reason of their being barred from the courthouse by Panola County officials is circuitous, if not self-defeating. The conduct of the Panola County officials is, in fact, the crux of petitioners' substantive claim. If the facts of a civil rights claimant's cause of action can successfully be alleged as a ground for "tolling", there is, then, no applicable statute of limitations; the substantive complaint and grounds for tolling would always merge.

To the extent that petitioners' reliance upon *Hohri v. United States*, 782 F.2d 227 (D.C. Cir. 1986), rev'd 107 S.Ct. 2246, 482 U.S. 64, 96 L.Ed.2d 51 (1987), obliquely or

inferentially, suggests fraudulent concealment of facts by respondents (certainly respondents other than Texaco) that prevented petitioners from learning of their claim, it is sufficient to say that such a basis for tolling, under Texas law, would be operative only until petitioners acquired the requisite knowledge the fraudulent concealment purportedly denied them. See: *Borderlon v. Peck*, 661 S.W.2d 907, 908 (Tex. 1983).

The summary judgment record more than adequately invokes that rule. The purported physical disbarment of petitioners from the courthouse was conceded by them to have terminated at least by January 1, 1974. (R. 1242.)[4] The previous discussion (pp. 8-11) establishes requisite knowledge of all other elements of petitioners' claim prior to January 1, 1974. This knowledge effectively removed any ground for tolling at that time and activated accrual of the appropriate statute of limitations.

CONCLUSION AND PRAYER

The facts upon which summary judgment was rendered are found either in "admissions" by petitioners or their own words answering interrogatories. The dictates of *Anderson v. Liberty Lobby*, 106 S.Ct. 2505, 477 U.S. 242, 91 L.Ed.2d 202 (1986) and *Celotex Corporation v. Catrett*, 106 S.Ct. 2548, 477 U.S. 317, 91 L.Ed.2d 265 (1986), are not implicated. This is not a battle of opposing affidavits or conflicting answers, nor does it involve assessment of credibility. The issue here involves the legal implications

---

[4] " * * * Plaintiffs were physically barred up to and including approximately 1973. * * * " (R. 1242.)

of facts petitioners admit exist. The cases cited fully condone summary judgment in that context.

WHEREFORE, PREMISES CONSIDERED, Texaco Oil Company, prays that the petition for writ of certiorari herein be denied forthwith. Texaco additionally prays for such other and further relief to which it may justly be entitled at law or in equity.

Respectfully submitted,

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APPENDIX A

Sec.
16.066. Action on Foreign Judgment.
16.067. Claim Incurred Prior to Arrival in this State.
16.068. Amended and Supplemental Pleadings.
16.069. Counterclaim or Cross Claim.
16.070. Contractual Limitations Period.
16.071. Notice Requirements.
16.072. Saturday, Sunday, or Holiday.

SUBCHAPTER A.
LIMITATIONS OF PERSONAL ACTIONS

§ 16.001. Effect of Disability

(a) For the purposes of this subchapter, a person is under a legal disability if the person is:

(1) younger than 18 years of age, regardless of whether the person is married; or

(2) of unsound mind.

(b) If a person entitled to bring a personal action is under a legal disability when the cause of action accrues, the time of the disability is not included in a limitations period.

(c) A person may not tack one legal disability to another to extend a limitations period.

(d) A disability that arises after a limitations period starts does not suspend the running of the period.

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 1049, § 56, eff. Sept. 1, 1987.

Section 65 of the 1987 amendatory act provides:

"(a) A period of limitations that on August 31, 1987, was tolled under Section 16.001 or 16.022, Civil Practice and Remedies Code, because the person entitled to bring the action was imprisoned, begins to run on the effective date of this Act.

"(b) A period before the effective date of this Act during which a person was under a legal disability because of imprisonment is not affected by this Act."

§ 16.002. One-Year Limitations Period

A person must bring suit for malicious prosecution, libel slander, or breach of promise of marriage not later than one year after the day the cause of action accrues.

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985.

§ 16.003. Two-Year Limitations Period

(a) A person must bring suit for trespass for injury to the estate or to the property of another, conversion of personal property, taking or detaining the personal property of another, personal injury, forcible entry and detainer, and forcible detainer not later than two years after the day the cause of action accrues.

(b) A person must bring suit not later than two years after the day the cause of action accrues in an action for injury resulting in death. The cause of action accrues on the death of the injured person.

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985.

§ 16.004. Four-Year Limitations Period

(a) A person must bring suit on the following actions not later than four years after the day the cause of action accrues:

(1) specific performance of a contract for the conveyance of real property;

(2) penalty or damages on the penal clause of a bond to convey real property; or

(3) debt.

(b) A person must bring suit on the bond of an executor, administrator, or guardian not later than four years after the day of the death, resignation, removal, or discharge of the executor, administrator, or guardian.

(c) A person must bring suit against his partner for a settlement of partnership accounts, and must bring an action on an open or stated account, or on a mutual and current account concerning the trade of merchandise between merchants or their agents or factors, not later than four years after the day that the cause of action accrues. For purposes of this subsection, the cause of action accrues on the day that the dealings in which the parties were interested together cease.

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985.

§ 16.005. Action for Closing Street or Road

(a) A person must bring suit for any relief from the following acts not later than two years after the day the cause of action accrues:

(1) the passage by a governing body of an incorporated city or town of an ordinance closing and abandoning, or attempting to close and abandon, all or any part of a public street or alley in the city or town, other than a state highway; or

(2) the adoption by a commissioners court of an order closing and abandoning, or attempting to close and abandon, all or any part of a public road or thoroughfare in the county, other than a state highway.

(b) The cause of action accrues when the order or ordinance is passed or adopted.

(c) If suit is not brought within the period provided by this section, the person in possession of the real property receives complete title to the

* * *

APPENDIX B

TEXACO INC. SUBSIDIARIES AS OF JUNE 1988

Bay Drilling Corporation
Bridgeline Gas Distribution Company
El Capitan Mutual Water Company
Getty Capital Corporation
Harrison Capital Inc.
Harrison Corporation, The
  Boca Del Mar Inc.
  Texaco Boca Del Mar Inc.
Getty Oil Company
Getty Oil International (Caribbean) N.V.
Getty Timberlands Inc.
Neches Gas Distribution Company
Paragon Oil Company, Inc.
Riverway Gas Pipeline Company
Sabine Pipe Line Company
Seaboard Oil Company
Texaco Canada Inc.
  Canadian Reserve Oil and Gas Ltd.
  Great Eastern Oil Ltd.
  McColl-Frontenac Oil Co. Ltd.
  Oilship Limited
  Texaco Canada Resources Ltd.
    Cynthia Gas Gathering Company Limited
    La Societe Acadienne de
      Recherches Petrolleres Ltd.
    380311 Alberta Limited
    Texaco Canada Enterprises Ltd.
    Texaco Canada Gas Enterprises Inc.
    Texaco Canada Properties, Inc.
  Tournemaine Realties Limited
Texaco Capital Inc.
Texaco Capital N.V.
Texaco Chemical Company
  Federal Chemical Company
  Seachem Pipeline Company

Texaco Chemical International Sales Corporation
Texaco Chemical International Trader Inc.
Texaco Chemical Pipeline Company, Inc.
Texas Chemical Company
Texaco Development Corporation
Texaco Exploration Properties Inc.
Texaco Financial Services Inc.
Texaco Fourbear Inc.
Texaco Harvest Gas Pipeline Company Inc.
Texaco Harvest Pipeline Company Inc.
Texaco Mineral Company
Texaco Producing Inc.
Texaco Properties Inc.
Texaco Refining and Marketing Inc.
Texaco Overseas Holdings Inc.
Texaco Trading and Transporation Inc.
Texaco Syngas Inc.
Texaco Tamarac Inc.
Texaco Timberlands Inc.
TXL Oil Corporation, The
Whitney Supply Company

TEXACO PRODUCING INC. SUBSIDIARIES
AS OF JUNE 1988

ACC Chemical Company
Chemplex Construction Corporation
Associated Oil Company
Basin Drilling Corp.
Getty Canadian Minerals, Limited
Getty Canadian Metals, Limited
Getty Chemical Company
Chemplex Construction Corporation
Getty Energy Company
Getty Gas Gathering, Inc.
Getty Mining Company
CP Water Company
Getty Canadian Mining Company
Getty Mining International Inc.
Getty Minerals Company, Limited

Getty Mines, Limited
Getty Mining Northwest, Limited
Getty Mining Pty. Ltd.
Hueiva Pyrites, Inc.
Seville Metals Corporation
Texaco Oil Development Company
Grande Properties, Inc.
Petrotomics Company
Getty Oil Exploration Company
Getty Scientific Development Company
Minnehoma Corporation
Minnehoma Develpment, Inc.
Nuclear Fuel Services, Inc.
Skelly Leasing Company
Vanply, Inc.
Vanply of Liberia, Inc.
Vancouver Plywood Co., Inc.
Snake River Gas Transmission Corp.
Texaco Alaska Inc.
Texaco Coalinga Energy Company
Texaco Cogeneration Company
Texaco Congeneration Gas Company
Texaco Gas Inc.
Texaco Gas Marketing, Inc.
Texaco Midway-Sunset Cogeneration Company
Texaco San Ardo Energy Company
Texaco Services Inc.
Texaco Sobel Cogeneration Company
Texaco Yoakum Energy Company
TPI Ventures Inc.
Wasco Gas Services, Inc.

(3)

Supreme Court, U.S.
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No. 88-1312

In The

Supreme Court of the United States

October Term, 1988

ESTATE OF ARCHIBALD CORNETT, ET AL,
Petitioners,

vs.

ESTATE OF M. D. SIKES, ET AL,
Respondents.

BRIEF OF PANOLA COUNTY, TEXAS, ANN LEWIS RIVES, AND NEVELYN FOSHEE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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16p

No. 88-1312

In The

Supreme Court of the United States

October Term, 1988

ESTATE OF ARCHIBALD CORNETT, ET AL,
Petitioners,

vs.

ESTATE OF M. D. SIKES, ET AL,
Respondents.

LIST OF PARTIES

PETITIONERS:

Estate of Archibald Cornett
Estate of Sally Williams Cornett
Jenny Cornett-German
Lillian German-Benjamin
Julie Payton
Betty Payton
Bailey Payton
Mary Nell Payton

Carrie Armstrong
Huey German
Jesse E. German
Annie M. Jones
Shirley J. German
Michael German
Joe German
Tommie German
Jennie L. Johnson
Bobbie J. Banks
Roy J. German
Le Otis Thomas
Sandra Felder
Clarissa Hudson
Kelly Jackson, Sr.
Beulah M. Curtis
Gwendolyn Pipkin
Kimberly Pipkin
Donna Pipkin
Eva Jean Pipkin
Sallie McMillons
Raymond Pipkin
Judy Pipkin
Steve Pipkin
Eva Pipkin
Hilda Pipkin
Many O'gilvie Williams
Thomas Pipkin
Melvina Tucker
Ruth Pipkin Yadell
Jim Payton

Alton Cornett
Willie Cornett
Vernon Cornett
Bernice Washington
Lee A. Cornetton
Robert Cornett
Leona Cornett Bars
John A. Cornett
Bernice Jones
Archie Cornett
Sallie Mae Cornett
Gates Cornett
Jewel Cornett
Marvis McMillons
Vernice Thomas
Bogus Cornett
Velma Cornett Grasple
Ruby Cornett Hall
Charles Daughtery
Ollie Tucker Hollins
Newt Tucker
Blanchard Tucker
Linda Cornett
Levada Cornett
Robert Louis Cornett
David Earl Cornett
Audrey Cornett Hines
Ada Cornett
Laura Mae Allen
Perry O'Gilvie
Leona Portley

RESPONDENTS:

Estate of M. D. Sikes
Claude (H.C.) Foshee
Nevelyn Foshee
Ann Lewis Rives
Louis Werner Saw Mill Co.,
its Successors and Assigns
County of Panola, Texas
Texaco Oil Company

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STATEMENT OF THE CASE

This is a suit brought by Petitioners pursuant to 42 U.S.C. 1981, 1982, 1983, 1985, 1986, and 1988.

The Petitioners' Statement of the Case fails to reference any portion of the record to support the statements contained therein. Respondents Panola County, Texas, Ann Lewis Rives, and Nevelyn Foshee respectfully submit that the opinion of the United States Court of Appeals for the Fifth Circuit, contained in Petitioners' Appendix, Pages 1A through 5A, and the order of the United States District Court for the Eastern District of Texas, contained in Petitioners' Appendix, Pages 8A through 12A, correctly reflect the proceedings and rulings in the Courts below, and summarize the pertinent facts.

SUMMARY OF THE ARGUMENT

The Circuit Court considered all issues raised by Petitioners and correctly determined that the Texas two year statute of limitations controlled this civil rights action. The Court further correctly determined that the Petitioners' cause of action accrued more than two years prior to the filing of this law suit, and any alleged tolling of the applicable statute of limitations ended more than two years prior to the filing of the law suit.

REASONS WHY THE WRIT SHOULD BE DENIED

The District Court granted a summary judgment on behalf of the Respondents in this case, stating that the Petitioners had filed their suit after the applicable limitations period had expired. This decision of the District Court followed the reasoning of the Fifth Circuit in *Cross v. Lucius,* 731 F.2nd 153 (5th Cir.1983). The District Court correctly determined that the Texas two year statute of limitations, found in §16.003 of the *Texas Civil Practice and Remedies Code,* applied in this case. *Peter Henderson Oil Co. v. City of Port Arthur,* 806 F2nd 1273(5th Cir.1987); *Longoria v. City of Bay City, Texas,* 779 F.2nd 1136 (5th Cir.1986). (The district court did observe that the cause of action under 42 U.S.C. 1986 was governed by the 1986 one year statute of limitations provided in that statute.) The decision of the District Court was correctly affirmed by the United States Court of Appeals for the Fifth Circuit.

The Petitioners apparently do not dispute the ruling of the Courts below that the Texas limitation period applies. The gist of the Petitioners' complaints appears to be that the Petitioners' cause of action had not accrued until shortly before the law suit was filed, and/or that the statute of limitations was tolled until shortly before the law suit was filed. Respondents Panola County, Texas, Ann Lewis Rives, and Nevelyn Foshee submit that the following facts, established by the Petitioners themselves, are pertinent to these allegations of error:

(1) By 1959, the heirs of Archibald Cornett had hired an attorney to assert a claim of title to the acreage made the basis of this law suit, including the mineral estate. (R.1237,1214.).[1] This attorney, Williams Conners, represented all of the heirs of Archibald Cornett. (R.1238,1214.). Further, attorney Conners believed his investigation revealed a conspiracy to defraud his "colored" clients. (R.1238,1214).

(2) In 1961 Petitioners employed attorney Philander Neville to help reclaim the property made the basis of this law suit. (R.1244). Pursuant to that employment, Petitioners assigned to attorney Neville a (1/4) one-fourth interest in the disputed property. (R.1220-1236). At the time this assignment was made to attorney Neville, the Petitioners were aware that a problem existed with respect to the chain of title of the property made the basis of this law suit. (R.1245).

(3) Prior to 1971 officials of Panola County allegedly refused to allow members of the Cornett family to examine public deed and tax records pertinent to the land in question. (R.1242).

(4) Any physical barring of the Petitioners from the deed records of Panola County ended approximately January 1, 1974. (R.1242-1244).

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[1] References to "R" are to the Record in the Courts below.

A. Accrual of the Plaintiffs Cause of Action

The date a cause of action accrues is a question of federal law. *Moore v. El Paso County Texas,* 660 F.2nd 586 (5th Cir.1981). The standard used to determine the accrual of a civil rights claim was stated as follows in *Lavellee v. Listi,* 611 F.2nd 1129 (5th Cir.1986), "The cause of action accrues when the Plaintiff knows or has reason to know of the injury which is the basis of the action." 611 F.2nd at 1131. Further, the Fifth Circuit Court of Appeals has stated that, "The limitations period begins to run when the Plaintiff either is or should be aware of both the injury and its connection with the alleged acts of the Defendant." *Longoria,* 779 F.2nd at 1138. As the District Court correctly noted, as early as October 2, 1961, the Petitioners were actively engaged in efforts to recover the land. They retained the services of a Chicago attorney on October 1, 1961, to reclaim the property. Further, the Petitioners' attorney was aware of an alleged conspiracy to defraud the Petitioners in 1959 and the Petitioners were allegedly physically barred from the deed records of Panola County, Texas, up to and including 1973. Thus, the Petitioners certainly were aware of their alleged injury in 1961, and of the alleged wrongful acts of the Respondents.

B. Tolling of the Statute of Limitations

The Petitioners claim that the applicable statute of limitations should be tolled is governed, again, by state law. *See, Johnson v. Railway Express Agency,* 421 U.S. 454, 95 S.Ct. 1716 (1975). The appropriate Texas case

appears to be *Borderlon v. Peck,* 661 S.W. 2nd 907 (Tex. 1983). Under *Borderlon,* fraudulent concealment of material facts may toll the statute of limitations. However, the Court in *Borderlon,* pointed out that the estoppel effect of fraudulent concealment ended when a party learned of *facts, conditions,* or *circumstances* which would cause a reasonably prudent person to make inquiry, which if pursued, would lead to discovery of the concealed cause of action. 661 S.W. 2nd at 909. (emphasis supplied). The Petitioners have stated that for many years preceding the filing of this law suit, they were attempting to recover their land. (see, e.g., Plaintiffs' answers to Defendant Texaco Oil Company's First Request for Admissions and Interrogatories, R.1237-1248). This establishes that the Plaintiffs were aware of their alleged injury over 10 years prior to this law suit being filed. Certainly, at the time they were aware of their injury, any alleged tolling of the limitations period expired.

Finally, Respondents submit that Petitioners' attempt to analogize their case to *Hohri v. United States,* ___ U.S. ___, 1075 S.Ct. 2246, 96 L.Ed. 51 (1987), was correctly considered and disposed of by the court below.

CONCLUSION

Respondents Panola County, Rives and Foshee respectfully submit to this Court that the District Court correctly dismissed this case because of its filing outside the applicable limitations period, and this decision was appropriately affirmed by the United States Court of

Appeals for the Fifth Circuit. The civil rights statutes which the Petitioners seek to assert as a cause of action existed for many years prior to their filing of this law suit. The record reveals that the Petitioners had actual knowledge of their alleged injury for many years prior to their filing of this law suit. The federal courts, in Texas and elsewhere, have been open to Petitioners for many years prior to their filing of this law suit. Respondents submit that the issues raised by the Petitioners were fully considered and correctly decided by the courts below.

Respondents Panola County, Rives, and Foshee further adopt by reference the Brief in Opposition to Petition for Writ of Certiorari of Respondent Texaco Oil Company.

WHEREFORE, PREMISES CONSIDERED, Respondents pray that this Honorable Court deny the Petition for Writ of Certiorari and for such other and further relief at law or in equity as they may show themselves justly entitled to receive.

Respectfully submitted,

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PANOLA COUNTY, TEXAS,
ANN LEWIS RIVES AND
NEVELYN FOSHEE

CERTIFICATE OF SERVICE

I certify that three true and correct copies of the foregoing Brief of Panola County, Texas, Ann Lewis Rives, and Nevelyn Foshee in Opposition to Petition for Writ of Certiorari were served on all parties required to be served by placing the same in the United States mail, postage pre-paid, return receipt requested, addressed as follows:

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Dallas, Texas 75202

Michael A. Hatchell
P. O. Box 629
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SIGNED THIS 22nd day of February, 1989.

G. THOMAS ALLISON, III, P.C.